

THE MODERN SCHOOLMAN

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NOVEMBER 1939



*a symposium on the philosophy
of*
CIVIL LAW

Introduction

Wilfrid Parsons

Legal Philosophy in the United States

Linus A. Lilly

Law: Eternal, Natural, Civil

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Modern Legal Theory and Scholasticism

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CONTENTS

INTRODUCTION TO THE SYMPOSIUM ON CIVIL LAW	- - - - - Wilfrid Parsons	1
LAW: AN AFFAIR OF REASON	- - - - - Gerard Smith	2
MODERN LEGAL THEORY ON SCHOLASTICISM	- - - - - Moorhouse F. X. Millar	5
LAW: ETERNAL, NATURAL, CIVIL	- - - - - T. Lincoln Bouscaren	9
LEGAL PHILOSOPHY IN THE UNITED STATES	- - - - - Linus A. Lilly	13
REALITY THE MEASURE	- - - - - Editorial Note	16

BOOK REVIEWS

<i>Saint Augustine's Philosophy of Beauty</i> - - - 17 Emmanuel Chapman	<i>Proceedings of the American Catholic Philosophical Association, 1938</i> - - - 19 Ed. Charles A. Hart
<i>An Introductory Course in Philosophy</i> - - - 17 J. A. Nicholson	<i>Paradise Planters</i> - - - 19 Katherine Burton
<i>Metaphysica Generalis</i> - - - 17 R. Arnou, S. J.	<i>The Kantian Philosophy of Space</i> - - - 19 Christopher Browne Garnett, Jr.
<i>Free Men</i> - - - 17 Lynn Harold Hough	<i>The Moral Philosophy of Santayana</i> - - - 19 Milton Karl Munitz
<i>Diogenes of Sinope</i> - - - 18 Farrand Sayre, Ph. D.	<i>Psychologia Metaphysica</i> - - - 20 Paul Siwek, S. J.
<i>Religions of Unbelief</i> - - - 18 André Bremond, S. J.	<i>Réalisme Thomiste et critique de la connaissance</i> - 20 Étienne Gilson
<i>St. Thomas and the Greeks</i> - - - 18 Anton C. Pegis	<i>Plato Today</i> - - - 20 R. H. S. Crossman

To supplement this SYMPOSIUM ON LEGAL PHILOSOPHY —

Symposia: On the State - Mar. 1935
On Natural Law - Jan. 1937
"The Radical Right" - Nov. 1935

Articles: The State and Natural Rights - Jan. 1936
The Philosophy that is in the Law - May 1935
The Scholastic Heritage of Our Law - Mar. 1936

Copies of all these issues of THE MODERN SCHOOLMAN and of the present Symposium are available.

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A Quarterly Journal of Philosophy

Vol. XVII, No. 1

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NOVEMBER 1939

A Symposium on the Philosophy of Civil Law

INTRODUCTION

WILFRID PARSONS

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IN THE INTRODUCTION to his monumental treatise on Law—*De Legibus*—the Spaniard Francisco Suarez devoted more than a page to proving that there is a true theology of law. He admits that this stand may cause some wonderment, but emphatically vindicates to the theologian the right to treat of law, even of human laws, from the standpoint of the science of sacred things.

For two centuries or more this classic treatise of Suarez remained the standard repository of legal thought in all of Christian Europe. With the gradual secularization of public life and of social thought that culminated in the "Enlightenment," Suarez was at length forgotten, or relegated to the books on the history of law. His fundamental thought remained, though with diminished influence, and the result is that today the world is torn between contradictory impulses which later on in this introduction I will take the liberty of analyzing.

Let me say at once, however, that the average non-Scholastic reader, studying this symposium on the *philosophy* of law, will probably be inclined to conclude that the four distinguished contributors have done what Suarez did before them, elaborated rather a theology of law. If some draw this conclusion, then nothing could more clearly reveal the necessity of the symposium itself, and of later work which one may hope will be its sequel.

It is certain, I think, that most modern theorizing about the origin and nature of law, even of civil law, has taken two crucial steps which would make the work of Suarez, for instance, look outmoded and impractical. There was first the divorce from the concept of law of all notion of a "natural" law as the participation of a transcendent Divine Law immanent in man. There followed, almost as a necessary result, a further divorce, which was almost as disastrous, the separation from law of the concept of reason as its source and measure. These two divorces will be traced in their origins and effects in the first two articles of this symposium. Together, I think, they illustrate, better than anything else, the state of mind which has brought about the present confusion of ideas.

The immediate and most striking result of this double divorce, of course, is a kind of empiricism which has substituted mere history for philosophy. The pragmatic spirit of behaviorism has taken the place of metaphysics. Instead of presenting as the basis of law certain immutable principles, which are both the assumptions and the spirit of legal enactments, they are content with tracing a science of evolutionary development, and with restricting their theorizing to explaining how this evolution came about.

This state of things, is, of course, not an isolated phenomenon. Law has merely suffered the fate of every other phase of human activity: life itself has been eviscerated of any inner spirit which will give it significance and permanence.

This also, however, must be noted, that while the European tradition has been supplanted by a more ancient positivism, that tradition has not altogether disappeared. The fact is that the two co-exist at the same time and in the same minds. If the ancient tradition had been entirely obliterated, or if it had remained to the present paramount and in command, in either case, we would be enjoying some kind of unity of thought. But the ancient-modern positivism is weakened by the survival of the former philosophy, while the European tradition is now too weak to do anything but act as a ghost, if a disturbing one, in the halls of legal learning. The result is that, holding two contradictory philosophies at once, the modern mind finds itself in a confusion which paralyzes any attempt at clearness or definiteness.

It is not my function, as the introducer of this symposium, to elaborate this notion; it will become abundantly clear in the course of the four papers. What, then, are these four writers driving at? If I may presume to say it in my own words, I would suggest that their first aim is unity—unity of thought as a necessary preliminary to unity of action. They find the source of this unity in a metaphysical explanation of the universe. Out of this metaphysical explanation will come two things: a rational conception of the State which is the author of civil law, and a clear-cut definition of law as an ordination of reason, and not merely as a precept of will.

Now I hope I am not allowing the preconceptions of a political scientist to mislead me when I say that nothing will result from consideration of the problems and the answers which they set forth, until we return to our traditional explanation of the State itself. If we still regard the State as an artificial structure, resulting merely out of a collection of wills and eventuating merely in some mystical entity called the General Will, then we will never be able to make valid to our contemporaries the inherently unassailable position taken by these four writers.

If the State is such an artificial creation, a creation of human wills under certain stresses of civilization, then obviously there is nothing back of the State which will find the source of law in man's nature itself. Law will begin with the organizing of society; society will in fact be its sole creator, as it will be the creator of all right

and of all rights. Law, as law, will have been reduced to an arbitrary dictum of those temporarily in power in the State, or, in a representative form of government, of a mere majority.

Moreover, under that concept of the State, law will have lost its original significance, which is that of an ordination of *reason* promulgated by him who has the care of the State for the common good. It will become simply a temporary and necessarily evanescent expression of a public will (read *prejudice*) and not even of a public opinion.

These two disastrous results are the very making of the error which has created the twin political philosophies of the dictator-States, whether Nazi-Fascist or Communist. They are also alien to the spirit which created the fundamental law of the United States, the American Constitution.

If, then, there should arise in the mind of the reader of these four papers the practical question of what is to be done about it, I think the answer is here. In this country, at least, the philosophy which is here set forth has not been entirely forgotten. It is enshrined in our principal political documents, it constantly emerges in decisions of our courts, particularly of the Supreme Court, in spite of the fact that even in these latter it is, as I have said, in conflict with another philosophy which is alien to our traditions and history.

If that is really so, then a line of action is opened to us. We may not be able to begin with asking our fellow-countrymen to accept in all its fullness the philosophy here set forth, with its spiritualistic premises as to man's nature and destiny. It would be a long task to convert the modern mind from its positivistic cast, with its inevitable tendency to adopt a monist philosophy. But we can begin by recalling the American mind to its origins in the political field. There at least it will recognize itself, however much it has superficially departed from it under stress of an alien thought.

This is a task which it seems to me is a predestined one for the Neo-Scholastic philosopher. By a curious trick of destiny, he has survived as almost the sole heir of the

philosophy which created the American system. The reason for this is that the creators of that system were still within the ancient European tradition, and used that tradition as the obvious court of appeal against a tyrannical majority in the British Parliament. It is this European tradition which forms the backbone of these four essays in the philosophy of law. If the non-Scholastic reader still insists that this is rather a theology of law, I would be inclined to agree with him. The religious implications of all four papers are so strong that they cannot and must not be overlooked. But at the same time, I would point out that this theology does not by any means repudiate reason; rather, in this field, it finds reason as its strongest instrument.

I think that it is inevitable that a return to original political traditions will bring along with it a rebirth of traditional legal thought. It seems to me that it is no accident that the published work of more than one of these symposiasts has been along these lines. It is an instinctive and a rational approach to our problem. Granted that a right legal philosophy is perhaps the most important thing we can have to preserve human rights, decent living and free institutions, it is no less certain that a right political philosophy will conduce to this result more than anything else. The two are too inextricably intertwined for any other conclusion to be true.

The Neo-Scholastic contingent is admirably placed to put this program into effect. The four writers here chosen to present the philosophy, while outstanding in their field, are not by any means the only ones who have given thought to these problems. Moreover, in Europe, and especially in France and in England, there is a whole host of allies who may be counted on to supply inspiration and even leadership. If our own social scientists, our political philosophers, our legists, and our moral philosophers will join forces in a common effort to this end, we can operate with powerful force to bring back the current of American legal thought to its original course. If we do that, I think we will be surprised to find how many unsuspected allies we will find outside Scholastic ranks.

Law, An Affair of Reason

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PHILOSOPHY should find no great difficulty in answering the question, what is law? Nor should it be hard to see the reason for the answer. The trouble is, who but philosophers will accept, nowadays, philosophy's answer? We have a sort of division of the subject: first, the answer; secondly, the reasons for it; thirdly, some reflections upon the state of affairs which may make this symposium, or at least this part of it, fall upon stony ground.

1. What Is Law?

First, then, law is an affair of reason (*aliquid rationis*). That is the central point which an understanding of law

must seize. To seize it we must elbow for ourselves a roomy understanding of the matter.

Law is a rule and measure of acts, whereby man is induced to act or is restrained from acting: for *lex* (law) is derived from *ligare* (to bind), because it binds one to act. Now the rule and measure of human acts is the reason, which is the first principle of human acts, as is evident from what has been stated above (q. 1, a. 1 ad 3); since it belongs to the reason to direct to the end, which is the first principle in all matters of action, according to the Philosopher (*Phys. ii.*). Now that which is the principle in any genus, is the rule and measure of that genus: for instance, unity in the genus of numbers, and the first movement in the genus of movements. Consequently it follows that law is something pertaining to reason.¹

¹ S. T. I-II. 90. 1c.

It may be objected that law is not an affair of reason because (1) there is no reason in the "law of the members," yet the members have their law; (2) there is no law in the power, habit, or, when one is asleep, in the act of reason. Where, then, in reason, are we to allocate law? (3) Since only the will properly moves one to act, and law must direct the course of action, law is rather an affair of the will. These are but faulty understandings of the matter. In the first place law, being a rule or measure, exists both in the measure (reason) and, by participation, in the measured ("the members"). Further, law is a *construction* by practical reason of universal propositions concerning action. Such propositions are sometimes actually considered; at any rate they are habitually possessed. Lastly, it is true that reason gets its power to move from the will. For, from the fact that one wills the end, one's reason commands concerning the use of means. Nevertheless,

in order that the volition of what is commanded may have the nature of law, it needs to be in accord with some rule of reason. And in this sense is to be understood the saying that the will of the sovereign has the force of law; otherwise the sovereign's will would savour of lawlessness rather than of law.²

To resume: as one might say of a savoury dish, that is a cook's business, so of law, that is reason's business. There is reason in a good dish; nor is its recipe altogether without status in reason; nor will it be eatable if concocted merely upon the strength of a resolution to cook.

The Common Good

Such is the centrally intelligible area of law. Further explanation will consist in a radial motion of the understanding about that fixed point.³ Thus, were one to conclude that, since law is a matter of reason, we have here the very recipe of private benefit, the answer is that law belongs to that which is a principle of human acts, because it is their rule and measure. Now as reason is a principle of human acts, so in reason itself there is something which is the principle in respect of all the rest: wherefore to this principle chiefly and mainly law must needs be referred. Now the first principle in practical matters, which are the object of the practical reason, is the last end: and the last end of human life is bliss or happiness. . . . Consequently the law must needs regard principally the relationship to happiness. Moreover, since every part is ordained to the whole, as imperfect to perfect; and since one man is a part of the perfect community, the law must needs regard properly the relationship to universal happiness. . . . Now in every genus, that which belongs to it chiefly is the principle of the others, and the others belong to that genus in subordination to that thing: thus fire, which is the chief among hot things, is the cause of heat in mixed bodies, and these are said to be hot in so far as they have a share of fire. Consequently, since the law is chiefly ordained to the common good, any other precept in regard to some individual work, must needs be devoid of the nature of a law, save in so far as it regards the common good. Therefore every law is ordained to the common good.⁴

Origin and Promulgation

Another radial motion of understanding about the fixed center of intellection, law is an affair of reason, is the following. Law is not, without qualification, a matter of just anyone's reason. For,

a law is in a person not only as in one that rules, but also by participation as in one that is ruled. In the latter way each one is a law to himself, in so far as he shares the direction that he receives from one who rules him. Hence the same text goes on: *Who show the work of the law written in their hearts.*⁵

² *Ibid.*, ad 1. See *ibid.*, ad 1, ad 2.

³ See Mortimer J. Adler, *St. Thomas and the Gentiles* (Milwaukee: Marquette University Press, 1938), p. 51.

Thus, law is not a matter of anyone's reason except in so far as anyone may be reasonable. Just so, truth is not a matter of what anyone thinks, though anyone may think what is true.

Another radial movement of understanding about law being an affair of reason, and we are done with the nature of law. Promulgation is necessary to law. The reason is that

a law is imposed on others by way of a rule and measure. Now a rule or measure is imposed by being applied to those who are to be ruled and measured by it. Wherefore, in order that a law obtain the binding force which is proper to a law, it must needs be applied to the men who have to be ruled by it. Such application is made by its being notified to them by promulgation. Wherefore promulgation is necessary for the law to obtain its force. . . . The natural law is promulgated by the very fact that God instilled it into man's mind so as to be known by him naturally.⁶

The conclusion, from the fixed center and its circumscription by the three movements of understanding about it, is the definition of law: "*from the four preceding articles, the definition of law may be gathered; and it is nothing else than an ordinance of reason for the common good, made by him who has care of the community, and promulgated.*"⁷

Kinds of Law

We may now pass on to the subjects of which law may be the predicate. These subjects, the kinds of law, are determined by the same radial movement of intellection about the center, law is an affair of reason. Thus,

a law is nothing else but a dictate of practical reason emanating from the ruler who governs a perfect community. Now it is evident, granted that the world is ruled by Divine Providence, as was stated in the First Part, that the whole community of the universe is governed by Divine Reason. Wherefore the very idea of the government of things in God the Ruler of the universe, has the nature of a law. And since the Divine Reason's conception of things is not subject to time but is eternal, . . . therefore it is that this kind of law must be called eternal.⁸

As for natural law,

. . . law, being a rule and measure, can be in a person in two ways: in one way, as in him that rules and measures; in another way, as in that which is ruled and measured, since a thing is ruled and measured, in so far as it partakes of the rule or measure. Wherefore, since all things subject to Divine Providence are ruled and measured by the eternal law, as was stated above (a. 1); it is evident that all things partake somewhat of the eternal law, in so far as, namely, from its being imprinted on them, they derive their respective inclinations to their proper acts and ends. Now among all others, the rational creature is subject to Divine Providence in the most excellent way, in so far as it partakes of a share of providence, by being provident both for itself and for others. Wherefore it has a share of the Eternal Reason, whereby it has a natural inclination to its proper act and end: and this participation of the eternal law in the rational creature is called the natural law.⁹

Human law is also based upon what has already been said.

As stated above (q. 90, a. 1 ad 2), a law is a dictate of the practical reason. Now it is to be observed that the same procedure takes place in the practical and in the speculative reason: for each proceeds from principles to conclusions, as stated above (*ibid.*). Accordingly we conclude that just as, in the speculative reason, from naturally known indemonstrable principles, we draw the conclusions of the various sciences, the knowledge of which is not imparted to us by nature, but acquired by the efforts of reason, so too it is from the precepts of the natural law, as from general and indemonstrable principles, that the human reason needs to proceed to the more particular deter-

⁴ *S. T. I-II. 90. 2c.* ⁵ *Ibid.*, 3 ad 1. ⁶ *Ibid.*, 4c., ad 1.

⁷ *Ibid.*, 4c. ⁸ *I-II. 91. 1c.* ⁹ *Ibid.*, 2c.

mination of certain matters. These particular determinations, devised by human reason, are called human laws, provided the other essential conditions of law be observed, as stated above (q. 90, aa. 2, 3, 4). . . . The human reason cannot have a full participation of the dictate of the Divine Reason, but according to its own mode, and imperfectly. Consequently, as on the part of the speculative reason, by a natural participation of Divine Wisdom, there is in us the knowledge of certain general principles, but not proper knowledge of each single truth, such as that contained in the Divine Wisdom; so too, on the part of the practical reason, man has a natural participation of the eternal law, according to certain general principles, but not as regards the particular determinations of individual cases, which are, however, contained in the eternal law. Hence the need for human reason to proceed further to sanction them by law.¹⁰

2. Reasons for Acceptance

Such is the synthesis. The next question is, What is the ultimate basis for the reasoning of Christian philosophers? The answer seems to lie in a certain way they have of conceiving a creature's relation to God. A creature is a being to which something of supreme importance has happened: it has been created. Chesterton says somewhere that he would be insulted if anyone were to think he could do no wrong. The greatest insult one can offer to a creature is to deny that it could have been non-existent. Just as we really compliment one by believing he could have done wrong but didn't, so we compliment creation by thinking that whereas it could not be, nevertheless there it is. Two points are involved here: the tenuousness of a creature's status; the guaranteed luxuriance of its being withal. Created being is assured of being because it is assured of having been created. Totally dependent, created being, by its very dependence, is. The metaphysical insight involved here is not often reached; it is still less often expressed—as the present expression may well witness; and even when expressed, a philosophy of essences keeps it from being really meant. Nevertheless, until it be grasped that anything not-God exists only because God has made it to be, and that, because God has made it to be, therefore it really is, the essential meaning of law—and of much else in Christian philosophy—will be totally missed.

For, in a creationist metaphysic, the principle of action, the good, is good only because it is related to God. It is the same relation as between Being and beings. A being is, only because God has made it to be; a good is good, only because, in making it to be, God thereby made it to be good. Action, therefore—since the good is its principle—receives its explanation as being a tendency towards, a loving of (an unaware loving, usually even in man's case), the Total Good by way of loving the Total Good's analogues. "No one could seek thee [God] unless he had already found thee."¹¹ Clearly, in such a

metaphysic, movement is movement only because it is towards God, just as being is being only because it is from God.

Such reasoning [as, that natural love, resting upon natural union, cannot love God, Who is far above the angelic nature, more than self] holds good of things adequately divided, whereof one is not the cause of the existence and goodness of the other; for in such natures each one loves itself naturally more than it does the other, inasmuch as it is more one with itself than it is with the other. But where one is the whole cause of the existence and goodness of the other, that one is naturally more loved than self; because, as we said above, each part naturally loves the whole more than itself: and each individual naturally loves the good of the species more than its own individual good. Now God is not only the good of one species, but is absolutely the universal good; hence everything in its own way naturally loves God more than itself.¹²

The line of creaturely movement towards God is as straight as the line of a creature's exodus from God. There are not intermediaries in either direction: nothing but God causes being, nothing but God presides ultimately over its movement.

Observance of Law

Granting the straightness of the line, *viz.*, granting that any good is good only because it leads to God, the question next is, how is that line maintained rigid? how does a creature keep on it? If the question concerns creatures below man, the answer is that there is no question. Such creatures are on, and they cannot get off, the line. They merely follow, so to say, their noses, and that they must do. If, however, the question concerns man, the answer is as different as is the principle of a man's life different from a dog's. Someone has said that the principle of a dog's life is: whatever *is*, smells; whatever smells not, *is* not. It may be so. At any rate, a principle of human life is: whatever *is*, *is*; whatever is not, *is* not, and this principle issues from reason. Thus, in a way, man also follows his nature, as must anything—in order to fulfill its being. Only, man's nature is rational. Whence, action in accord or disaccord with his nature is action in accord or disaccord with his reason.¹³

The deep meaning of that answer will escape one who does not recall its creationist context. The dictates of reason are no more, and no less, autonomous than is created being. No less: reason's dictates are truly reason's dictates, just as being is truly being; no more: reason's dictates are as truly God's, just as created being is God's creation.

Whatever is irregular in a work of art, is unnatural to the art which produced that work. Now the eternal law is compared to the order of human reason, as art to a work of art. Therefore it amounts to the same that vice and sin are against the order of human reason,

[Continued on p. 8]

¹⁰ *Ibid.*, 3c., ad 1.

¹¹ St. Bernard, *De Diligendo Deo*, c. vii. See E. Gilson's magnificent explanation of the points made in the text in his *The Spirit of Mediaeval Philosophy* (New York: Scribner's, 1936), c. xiv. Some pertinent Thomistic texts are: S. T. I. 60. 5c.; 2 *Sent.*, d. 1, 2. 1, 2c.

¹² S. T. I. 60. 5 ad 1.

¹³ *Ibid.*, I-II. 71. 2c.: "I answer that, as stated above (a. 1), vice is contrary to virtue. Now the virtue of a thing consists in its being well disposed in a manner befitting its nature, as stated above (a. 1). Hence the vice of any thing consists in its being disposed in a manner not befitting its nature, and for this reason is that thing *vituperated*,

which word is derived from *vice* according to Augustine (*De Lib. Arb.* iii. 14).

"But it must be observed that the nature of a thing is chiefly the form from which that thing derives its species. Now man derives his species from his rational soul: and consequently whatever is contrary to the order of reason is, properly speaking, contrary to the nature of man, as man; while whatever is in accord with reason, is in accord with the nature of man, as man. Now *man's good is to be in accord with reason, and his evil is to be against reason*, as Dionysius states (*Div. Nom. iv.*). Therefore human virtue, which makes a man good, and his work good, is in accord with man's nature, for as much as it accords with his reason: while vice is contrary to man's nature, in so far as it is contrary to the order of reason."

Modern Legal Theory and Scholasticism

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CAN it be true that, for all our anti-traditional boast of modernism in all things, we have reverted to the age of the Sophists who "had no philosophy?"¹ Have we returned to the state of mind of the Greek and Roman Stoics, for whom, as with our present-day pseudo-scientists, everything human and divine was to be somehow reducible to a blind and purely physical principle in things? Telling evidence of such a reversion—at least in the matter of law—presents itself in the following statement of a French jurist, Claude du Pasquier, who sets forth the problem of law from the strictly modern point of view: As a regulator of social life, law comprises many and diverse elements. On the one hand, as the creation of the human mind, it reflects an ideal; on the other, it is the result of factual circumstances. In one respect it is an expression of the will of the rulers, in another it is but an explicit manifestation of the customs of a people. To understand and apply it, recourse must be had to grammar, logic, history, morality, psychology and sociology. Hence as we examine it from one angle or another it is seen to take on many very different aspects and its physiognomy, as it were, is completely changed according to the emphasis placed upon one rather than another of its elements. If we allow, therefore, for the great diversity of those who have taken up the problem of its theory, each one following the peculiar bent of his own mind, there is little wonder if law should refuse to be brought within one commonly accepted concept, or if disagreement should exist whenever there is question of defining what it is.²

Modern Theories

The modern mind, facing the question—what is positive law as a *necessary* element of social control—either resolves the problem into sheer conceptualism with no objective basis for common agreement, or into an exclusive consideration of the mere *phenomena of law*. Hence the reason for the inadequacy of modern theories is twofold: There is the perfectly gratuitous assumption—contrary to common sense—that the only valid form of knowledge is "scientific"—allowing for no principle in reality whereby these phenomena may be *intelligibly* discerned as manifestations of an underlying unity, the true nature of law. Then there is the reason discussed in the preceding article—the rejection of the science of reality itself, of metaphysics. Regarding this science of the real, the philosopher, Jaques Chevalier, in a notable essay, points out: In order that the logician or psychologist may perceive, at the heart of our intellectual representations, a difference between what comes from us and what comes from things, between what is *conceived* by our mind and what is *seen* by it, between the concept and the idea, the metaphysician must previously have opened the way for him. For here as everywhere, whether we like it or not or whether we recognize it, it is metaphysics that raises problems and it in consequence is alone capable of solving them. Nor is there anything strange in this, seeing that metaphysics is the science of the real and no problem is either posited or solved except in function of reality.³

Owing to the influence of Hume's skepticism, however, and to the wide acceptance for a considerable period of subjective idealism, which has proved to be nothing more

than the hybrid offspring of the Cartesian and Kantian confusion of metaphysics with mathematics and Newtonian physics, modern philosophy was reduced to the abject state of utter futility in which it now lingers. As a result science has mistakenly been called upon to take its place. But this also was bound to prove abortive. The manner of its failure is well described by Gilson:

The natural tendency of science is not towards unity, but towards an ever more complete disintegration. Such facts point to an intrinsic heterogeneity of the world. True enough, everything is strictly determined, but the sum total of all those determinations does not make up a whole. Now, even though the physical world, as expressed by positive science, is not a coherent system of things, yet a society, to be a real society, must be a coherent system of men; this is impossible, however, unless its fundamental outlook on the world has some sort of unity. A primitive tribe is a whole because of its fetich; a theological civilization is one because of its god; a metaphysical society is swayed by the Author of Nature; but if it has nothing to live by except science and its disconnected laws, society will inevitably find itself condemned to a state of complete disintegration; in fact, it will not be a society at all.⁴

What effect the rejection of metaphysics and the substitution of scientism in jurisprudence have had on modern theories of law is rather ingenuously summed up by Roscoe Pound in his well known contribution, *The Spirit of the Common Law*.

Five types of philosophy of law in the nineteenth century are of significance for our present purpose. We may call those who adhered to them the metaphysical (i. e. the Kantian) school, the historical school, the utilitarians, the positivists and the mechanical sociologists. It is a striking example of the way in which the same conclusion may sustain the most divergent philosophical premises that all of these arrived ultimately at the same juristic position by wholly diverse starting points, so that the futility of conscious effort to improve the condition of humanity through the law and conception of justice as the maximum of self-expression became axioms of juristic thought.⁵

"Man the Measure of All"

What Mr. Pound fails to note is that, beneath an apparent diversity in the professed enunciation of premises, every modern system is founded in one and the same actual—even if only implicit—assumption with regard to man. Whether it be as the *solipsistic* individual of Kantian idealism, as the *naturalistic* individual of the historical school, or as the *atomic* individual of the exclusive empiricism of the utilitarian, positivist, and sociological schools, in every instance man is regarded primarily either as anti-social or, like some animals, no more than instinctively gregarious. This may be said to be the logical outcome of the sixteenth century doctrine of "private judgment." At that time man was again, as with the Sophists of old, the measure of all things. And then as well as now, that doctrine led to the violation of man's rational nature. Gilson puts the matter succinctly:

Man is best described as a rational animal. This looks like a very commonplace statement, yet Western culture is dying wherever it has been forgotten; for the rational nature of man is the only con-

¹ G. H. Sabine, *A History of Political Theory*, p. 27.

² Claude Du Pasquier, *Introduction à la théorie générale et à la philosophie du Droit*, p. 257.

³ Jaques Chevalier, *Le concept et l'idée* (Melanges Maurice

Hauriou), p. 118.

⁴ Etienne Gilson, *The Unity of Philosophical Experience* (New York: C. Scribner's Sons, 1937), p. 258.

⁵ Roscoe Pound, *The Spirit of the Common Law*, p. 151.

ceivable foundation for a rational system of ethics. Morality is essentially normality; for a rational being to act and to behave either without reason or contrary to its dictates is to act and behave, not exactly as a beast, but as a beastly man, which is worse. For it is proper that a beast should act as a beast, that is, according to its own nature; but it is totally unfitting for man to act as a beast, because that means the complete oblivion of his own nature, and hence his final destruction.⁶

From Protagoras to Thrasymachus, from Occam to Machiavelli, and from Kant to Hitler and *Mein Kampf*, the story has been ever the same. Conceptualism and empiricism do not, cannot check the brutalization of man; they can only invite it. With all reduced to mere subjective sentiment, the juridical order is deprived of any solid foundation in objective ethics; and the state, law, and government, become something purely extrinsic to individual conscience. All social obligation is identified with the sanction of force—and we have: "might makes right."

In the face of this modern degradation of man, it is well to realize for ourselves, in such a way as to be able to help bring about the acknowledgment by others, that at times there has been an entirely different state of affairs. There were periods in the Western world when the religious and moral disposition of the times were such that men of the sanctity of a St. Louis or of the moral integrity of a Washington could in all justice claim to rest the exercise of their legitimate right to authority, neither on the *Raison d'État* of a Frederick the Great nor on the *Volonté générale* of Rousseau, but on generally accepted grounds of practical reason. This, on the face of things, clearly argues that in such periods man was regarded far otherwise than he now is by the modern skeptical idealist or empiricist. Contrary to the idealist, it was definitely assumed with Burke that "Politics ought to be adjusted not to human reasoning, but to human nature; of which reason is but a part, and by no means the greatest part."⁷ And in sharp contradiction to the empiricists it was maintained on grounds traditionally warranted by what Gilson properly denominates "Medieval Universalism," that "human reasons and human wills are bound to agree, to the full extent that every one of them keeps faith with its own nature, which is to be rational."⁸

Freedom Under the Law of Reason

Reason as he may, man is not necessarily reasonable any more than—yield as he may—he is necessarily determined by his instincts; or as St. Thomas says:

Since there is in man a twofold nature, intellectual and sensitive; sometimes man is such and such uniformly in respect of his whole soul: either because the sensitive part is wholly subject to his reason, as in the virtuous; or because reason is entirely engrossed by passion, as in a madman. But sometimes, although reason is clouded by passion, yet something of the reason remains free. And in respect of this, man can either repel the passion entirely, or at least hold himself in check so as not to be led away by the passion. For when thus disposed, since man is variously disposed according to the various parts of the soul, a thing appears to him otherwise according to his reason, than it does according to a passion. The will is moved not only by the universal good apprehended by the reason, but also by good apprehended by sense. Wherefore he can be moved to some

particular good independently of a passion of the sensitive appetite. For we will and do many things without passion, and through choice alone; as is most evident in those cases wherein reason resists passion.⁹

It is precisely because man is essentially a rational animal that his instincts are relatively indeterminate. In the words of Maritain:

The kind of infinitude peculiar to the mind in the case of human beings gives a sort of infinity, a sort of indetermination, to the very life of the senses and instincts, which is incapable of finding its natural point of fixation—I mean in conformity with the peculiar requirements and destinies of human nature—elsewhere than in reason and in the formations which reason produces.¹⁰

This is the freedom that is man's. He finds himself relatively indifferent and with unlimited desires. He is able to deliberate intellectually between this or that—as far as things finite are concerned. Indeed, being free by nature man is under the inevitable necessity of choosing; but the choice is to be free—he cannot but will to determine himself actively. The foundation in human nature for man's way of acting is somewhat strikingly revealed in the words of Browning:

Man knows partly, but conceives beside,
Creeps ever on from fancies to the fact,
And in this striving, this converting air
Into a solid he may grasp and use,
Finds progress, man's distinctive mark alone.
Not God's and not the beasts': God is, they are,
Man partly is and wholly hopes to be.¹¹

Not only does he seek by an inner necessity to preserve himself in being—this is where the modern individualist assumption stops short—but he tends further. With equal necessity he strives toward the ulterior perfection of his being. He is intrinsically determined to pursue freely that Something transcendent to himself and all other things, which when possessed will fulfill the immense want of his rational nature. That this transcendent Something is the necessarily self-existent Absolute we call God, the Creator and final Perfector of our being, is a matter for our reason to ascertain in the exercise of its primary function. And this function is to discern the truth for its own sake as the specifying good of our intellects. To the extent that the intellect enlightens the will as to the final end and dynamic principle of all the will's activity, the latter, in turn, disposes the intellect functioning as practical reason—that is, functioning in its capacity of director and judge of our conduct—to discern and deliberate about the necessary or proper means by which the ulterior perfection of our being may be attained.

In this way we see how, but for our intellects, our wills would not be free, and yet, owing to our intellects, our wills are not without law. Such law is initially discerned by any intellect and becomes progressively discernible to our practical reason in the exercise of its function of evaluating human experience. The intellect, therefore, is a law that is constituted in our very nature as human beings. This is what is truly implied by such terms as the law of reason, the Natural Law, or the moral law of our being. It is by living in conformity with this law that man can

⁶ Gilson, *op. cit.*, p. 274.

⁷ Edmund Burke, "The Present State of the Nation," *The Works of Edmund Burke* (Oxford University Press), I, 335.

⁸ Etienne Gilson, "Medieval Universalism and Its Present Value," *Independence, Convergence, and Borrowing*, (Harvard University

Press), p. 215.

⁹ S. T. I-II. 10. 3.

¹⁰ Jacques Maritain, "Religion and Culture," *Essays in Order*, ed. C. Dawson and J. F. Burns (New York: Macmillan Co., 1931), p. 6.

¹¹ "A Death in the Desert."

gradually intellectualize his being, can make himself reasonable. It is thus that he can acquire the inner culture of intellectual and moral virtues through his power of self-determination, and give himself the countenance of his own true personality. It is in this sense, and not in the modern and individualistic or Kantian sense, that man is truly autonomous. Hence it follows that the freedom to which we are entitled is not the right to choose as we freely please but the right to achieve that freedom of autonomy which is acquired in the process of living in ever closer conformity with the essential exigencies of our rational natures.

Society

Now one of the fundamental exigencies of our human nature is the necessity of our having to live in ordered society. For even though man is autonomous, in the sense that he is under the obligation of *freely* conforming to the law of his own being, he is by no means sufficient to himself in the matter of doing so. In merely knowing and pursuing his final end and achieving his own perfection, he is essentially dependent upon others. In other words, by reason of their essential limitations as individuals, men as persons are essentially interdependent. Only by common effort can the conditions in the temporal order necessary to their development as human beings be either created, or maintained and promoted. Thus man is social not by instinct alone, but because of the very rationality of his nature. In this way the juridical order of society is linked directly with the moral law; for on this basis positive human institutions are to be reckoned as among the necessary means or essential exigencies of human nature. Hence it was that Burke, having in mind these "formations which reason produces" in the social order, could so aptly declare that:

Every sort of moral, every sort of civil, every sort of political institution, aiding the rational and natural ties that connect the human understanding and affections to the divine, are not more than necessary, in order to build up that wonderful structure, Man; whose prerogative it is, to be in a great degree a creature of his own making; and who, when made as he ought to be made, is destined to hold no trivial place in the creation.¹²

In consideration of the metaphysical nature of man—that is, if we look steadily at *reality*—it should be clear that states with their respective law and governments, although they be creatures of human convention, are to be judged good, in so far as they answer to a proper human end—not as something arbitrarily imposed from without, but as something proposed to the right reason or conscience of member citizens and subjects as a *bonum honestum*. By such a *bonum* we understand something good in itself in so far as it is *morally* perfective of human nature. In contravention of the Augustinian theory that, except for some original sin, there would have been no need for law and government, and in plain contradiction of the theories that identify all obligation, in respect to law and government with force, St. Thomas justifies law and authority thus:

A man is the master of a free subject by directing him to his proper welfare or to the common good. Such a kind of mastership would have existed in the state of innocence between man and man, for

two reasons. First, because man is naturally a social being, and so in the state of innocence he would have led a social life. Now a social life cannot exist among a number of people unless under the presidency of one to look after the common good; for many, as such, seek many things, whereas one attends only to one. Wherefore the Philosopher says, in the beginning of the *Politics*, that wherever many things are directed to one end, we shall always find one at the head directing them. Secondly, if one man surpassed another in knowledge and virtue, this would not have been fitting unless these gifts conduced to the benefit of others.¹³

Individualism and Positive Law

The primary function of law, then, is not to coerce but to direct. Failure to recognize this constitutes one of the most glaring of the many errors that may now be seen to follow, practically as well as logically, from what was previously pointed out as the individualistic assumption underlying all our modern theories. And since man is rational, and therefore social by nature, it is clear that the only intelligible justification for positive human law, as well as the only ground for its authority, can be nothing but its effectiveness as a means to the maintenance and promotion of the common good. But in the contemplation of modern juristic theory, which assumes that the individual is atomic and self-sufficient, there can not be a *common* good, in any objective sense—such as that which is proposed to a people for their own security and improvement. Everything resolves itself into "the conception of (modern legal) justice as the securing of the maximum of self-assertion." On this basis the function of positive human law becomes nothing more than the futile attempt to reconcile conflicting human interests, considered merely in their phenomenal aspect, on the principle of "a continually more efficacious social engineering"—to use the favorite expression of Roscoe Pound. But this, evidently, is like reckoning in the purely physical order without anything corresponding to the law of gravitation. Thus the initial error of modern theories in regard to positive human law is the tacit assumption that all law is somehow necessarily in conflict with the rights of the individual to do as he pleases. It was the perception of this egregious fallacy which led Burke to exclaim at the time of the French Revolution:

Of all the loose terms in the world, liberty is the most indefinite. It is not solitary, unconnected, individual, selfish liberty, as if every man was to regulate the whole of his conduct by his own will. The liberty I mean is *social* freedom. It is that state of things in which liberty is secured by equality of restraint. A constitution of things in which the liberty of no one man, and no body of men, and of no number of men, can find means to trespass on the liberty of any person, or any description of persons, in the society. This kind of liberty is, indeed, but another name for justice; ascertained by wise laws, and secured by well-constructed institutions. I am sure that liberty, so incorporated, and in a manner identified with justice, must be infinitely dear to every one who is capable of conceiving what it is. But whenever a separation is made between liberty and justice, neither is, in my opinion, safe.¹⁴

Justification of Positive Human Law

But if this gives us the proper relation of law to human freedom it follows that the principal function of law is to supplement the moral law with positive norms or conventional rules. These will be to common conduct what language is to the common thought of a people. If the sanction of force must be invoked against violators of pre-

¹² Edmund Burke, *op. cit.*, IV, 101.

¹³ S. T. I. 96. 4.

¹⁴ Burke, *op. cit.*, p. 64.

sumably just law, it is precisely because law is a good in itself—i. e., morally perfective of human nature on the principle, again stated by Burke:

If civil society be made for the advantage of man, all the advantages for which it is made become his right. It is an institution of beneficence; and law itself is only beneficence acting by a rule. Men have a right to live by that rule; they have a right to do justice; as between their fellows, whether their fellows are in politic function or in ordinary occupation.

This in itself, in so far as it supplies an intelligible justification of positive human law, also suggests the ground for its authority, inasmuch as it is thus seen to be a necessary means to the maintenance and promotion of the common good. That men, taken in the aggregate, are normally inclined to recognize law as something desirable in itself is easily deducible from the fact that if this were not the case no law, in the long run, could be enforced. But this is not the same as to say that the only ground for the obligation to conform to law is the mere fact that it gets itself generally accepted. This would conflict with the sound principle of human equality according to which no man has any right of *himself* to impose his will upon another. This being so, as none has dealt with this aspect

of the problem of law more adequately than did Burke, we conclude with this passage of his:

"In all forms of government the people is the true legislator; and whether the immediate and instrumental cause of the law be a single person or many, the remote and efficient cause is the consent of the people, either actual or implied; and such consent is absolutely essential to its validity. To the solid establishment of every law, two things are essentially requisite: first a proper and sufficient human power to declare the matter of the law; and next, such a fit and equitable constitution as they have a right to declare and render binding. With regard to the first requisite, the human authority, it is their judgment they give up, not their right. The people indeed are presumed to consent to whatever the legislature ordains for their benefit; and they are to acquiesce in it, though they do not clearly see into the propriety of the means by which they are conducted to that desirable end. *This they owe as an act of homage and just deference to a reason which the necessity of government has made superior to their own.*"¹⁵

¹⁵ "Fragments of a Tract on the Popery Laws," *The Works of Edmund Burke* (Dearborn Edition), II, 409. (Italics added.)

LAW, AN AFFAIR OF REASON [Continued from p. 4]

and that they are contrary to the eternal law. Hence Augustine says (*De Lib. Arb.* iii. 6.) that *every nature, as such, is from God; and is a vicious nature, in so far as it fails from the Divine art whereby it was made.*¹⁴

To conclude: the Christian doctrine of law is based upon a metaphysic in which everything not-God participates in the being of God. That is, as created, creatures "sure enough" are; yet they are only because they are created. Whence, creaturely movement is principiated by the Infinite Good; else—since particular goods cannot be ultimate causes—how explain movement? Now, the human principle of movement is reason. Reason is thus invested with a peremptoriness, an authority, which matches, proportionally, the very Providence of God.¹⁵

3. Stony Ground

As was remarked in the beginning, the trouble is, who but philosophers will accept this philosophy of law? On two counts this re-statement of the ultimate principles of law may be a waste of time. First, it may be a waste of time for those who already know and accept it—unless, of course, we do not count it loss, in the face of attack, to finger once more our weapons. It may be a waste of time, secondly, upon those who do not accept a creationist metaphysic because they do not accept any metaphysic. We should cherish no illusion about the effectiveness of Scholastic rhetoric, whatever be our confidence in Scholastic doctrine. A Gilson has found, perhaps to his amazement,¹⁶ that not even the proffered experience, not to say

the statement, of metaphysical truth has had much effect upon certain of his auditories. An Adler writes: "I have failed to argue these matters (the nature of knowledge and of man, the points I have been endeavoring to make under the terms of *being* and *reason*) with rhetorical effectiveness."¹⁷ If neither dramatic wit nor massive intellectuality succeeds in causing metaphysics to be accepted by modern auditories, it would seem vain for a Boeotian to carry on the discussion.

There are left several recourses. One might call the deniers of metaphysics names. They themselves resort to this. "Authoritarian, Fascist, Intellectual Dictatorship, Medieval,"¹⁸ are some of the names they use. One wonders why they are not repaid in kind. If reason is not to serve reality, then reason will serve the state, big business, the education racket, or the stomach. Pretty names could be fixed to these forms of slavery. They would fit. They might also stick. However, to call names is the sport of loutish minds. Recourse might also be had to direct argument, the burden of which would be to show that upon the supposition that one is right in denying the authority of reason, one must be wrong. Yet this method seems to leave cold those for whom democracy means the equal right of all to be wrong. We might also, as in the present paper, simply reiterate our doctrine, or organize symposia, a combination of the above recourses. It will be clear

¹⁴ *Ibid.*, ad 4. ¹⁵ See S. T. 91. 2c.

¹⁶ I say, "perhaps," because he seems to have measured pretty well the effect of his effort to reinstate metaphysics. He writes: "When the non-dogmatism (of the Harvard of James, Royce, Palmer and of the Harvard of Perry, Whitehead, Hocking, Lewis, and Sheffer) shows itself generous enough to welcome even dogmatism (*viz.*, the dogmatism of Gilson himself), it has obviously reached its point

of perfection." See *The Unity of Philosophical Experience* (New York: Scribner's, 1937), p. ix. This good, clean fun evinces a wittily shrewd estimate of the situation.

¹⁷ Mortimer J. Adler, *The Crisis in Contemporary Education*, p. 1b of the off-print from the *Social Frontier*, V (Feb., 1939), 42, 140-145.

¹⁸ Confer the polemic against the Hutchins plan. It is a "discarded metaphysics" which Mr. Hutchins' adversaries reject. Note, it is metaphysics which is discarded, not the discarded metaphysics.

to the reader that my hope from this last recourse, especially since I figure in the symposium, is rather dejected.

Reason Dethroned

We may as well face the following situation. There are positivists, those who reject philosophical knowledge; there are systematists, those who move in the dimensions of universal concepts; there are heretics, those who deny a point, or points, of philosophical doctrine.¹⁹ These are the modern ghosts of philosophy, haunting the ruins of metaphysics. Now, our main affair today in the field of law seems to be with the positivists. With them our dialectic must be, *per viam acquisitionis*, according to the *a posteriori* method. This will necessarily include history. History will reveal, if one has the wit to read it aright, more than the clash of contending schools of thought, more than the interplay of reasons;²⁰ history will reveal

¹⁹ See Mortimer J. Adler, *St. Thomas and the Gentiles*.

²⁰ See E. Gilson, *The Unity of Philosophical Experience*.

the inner history of reason itself, the history of reason's route from its godlike service to truth to its swinish service of the lower appetites. The stages of that *descensus Averno* are these: Reformation theology made it impossible for truth to issue from a corrupt reason; pushed thus far from its place of primacy by Luther and Calvin, reason began to subserve the interests of the state, of big business, of the "unstable certainties" of science,²¹ of the education and sociology racket, and finally, with the psychoanalysts, it is made to serve visceral ecstasy. This is a sort of historical *reductio ad absurdum* of reason. Make that *reductio* by the vicarious experience of historical knowledge, and you will see that if reason is not capable of issuing mandates it is not even capable of serving the intestinal tract. Either law or anarchy, that is the dilemma. To force that alternative upon the modern mind by the pressure of historical necessity—*hoc opus, hic labor*.

²¹ *The Nation* (Feb. 19, 1939) pp. 219, 220. The reviewer prefers the "unstable certainties" of science to the certainty of principles.

Law: Eternal, Natural, Civil

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THE clear intellect will not be repelled, but positively allured by the true concept of law: a participation by man in the very wisdom and will of the Creator. Man shares in that wisdom by knowing the law, and in the divine will by observing it.

This section of the symposium will set forth that concept in its broader lines and will attempt to define civil law in particular, showing its foundations and its position in Neo-Scholastic moral philosophy. The foundations of the philosophy of law, it should be made clear at the outset, are not "supernatural" or "religious" in the sense that they rest only on some revelation or on the teachings of an established religion. They are known and proved with certainty from observed facts by the light of natural reason. It will not do to label *unverifiable*,¹ the truths: that God exists and is the Orderer of the universe; that man's mind can attain truth, not only directly from sense perceptions but from evidence in itself supra-sensible; that man's will can determine itself to choices based upon intellectual perception of good; and that the happiness for which man is created consists in the eternal possession of God. These postulates cannot be verified, it is true, by a slide-rule, a compass, or a divining-rod. They require a finer instrument—a mind of average common sense and moderate education, reflecting upon the data of ordinary experience. This is the bed-rock upon which rests the philosophy of law. It is the philosophy of Aristotle, Augustine, Thomas of Aquin, Bellarmine, Suarez. It is neither ancient nor medieval. It is perennial.

The Eternal Law

Our universe is not a jumbled rock-pile, nor is its functioning a series of explosions. Rather—what is more wonderful—the explosions, which science finds in the remotest

heavens as well as in the tiny atom, result in coordination, in order. In an immense variety of circumstances, the almost infinite variety of things function variously, yet with a definite uniformity of result. Certain ends are attained with wonderful regularity through the functioning of created things according to their natures. Designing this order and willing the means of attaining it, the eternal Wisdom and Will constitutes the most fundamental of all law, called in our philosophy the Eternal Law. Creation put that law into operation and creatures function by it, each according to its own specific, God-given nature. The stars that spin in the heavens obey that law in response to forces—still known but partially to science—which keep them in their cycles of order. Because of that law the black maple seed produces only the black maple tree, with the distinctive leaf and seed and bark and grain of that species. Instincts, implanted in the nature of each of the animals, are the operations of that law ordering the actions of the animal world. And man follows that law, according to his own nature—which so differs from that of lower creatures that it gives rise to a particular category of law. Participation in the Eternal Law by sub-human beings need not detain us; that is law only in an improper sense—physical, not moral. But because of man's intelligence and free will, that is, because of his moral nature, his participation in the Eternal Law becomes what we call the Natural Law in the strict sense.²

The Natural Law

The Natural Law is a moral law because, though it may seem paradoxical, it governs the free actions of men. It is designed to bring man to his goal in life, eternal happiness; but not by imposing a physical necessity which would destroy his freedom. This necessity is moral—

¹ LeBuffe and Hayes, *Jurisprudence* (New York: Fordham University Press, 1938).

² St. Thomas, S. T. I-II. 91. 2.

obliging man to certain choices but leaving him physically free to reject them. The choices are dictated in one sense by human reason, in another by the Eternal Law itself, directing man toward his destiny. They are dictated by reason inasmuch as reason discovers them; they are dictated by God in the sense that He promulgates, in the very creation of human nature, the moral law which obliges man. Objectively these dictates include the ordinary, fundamental, and universal laws of morality which must be admitted by natural reason as binding on man's conscience antecedently to any positive law, human or divine.

If we may use the homely illustration of a man reading mandatory instructions from a signboard, the precepts of the Natural Law are the mandatory instructions on the board; the board itself is man's nature which, when scrutinized in all its aspects, aptitudes, and tendencies, yields the knowledge of the law; and the observer is man's reason reading the law in his nature, not as originating there, but as indicated there by the supreme Lawgiver.

The Natural Law is unchangeable because man's nature is unchangeable. He can no more change these laws of morality than he can change the direction of his circulation. One man, or all men together, can no more make abortion or adultery right than they can make cyanide of potassium good to eat. The latter is physiologically bad because it disagrees with man's physical nature; the former are morally bad because they wreck man's moral nature.

Saint Thomas defines law as "an ordinance of reason, for the common good, promulgated by the one who has authority over the community."³ This definition is derived primarily from the Natural Law, which is an ordinance of reason (the Wisdom of God), for the common good (man's attainment of his destiny), promulgated (in man's nature, where it can be read by the light of natural reason), by the one who has authority over the community (God, the Creator and Lord of all).

Who are subject to the Natural Law? Evidently, men,—all men, since it is the law written into human nature. Hence, not Catholics alone, nor Christians alone, nor Caucasians alone; strangest of all, not adults alone, nor those alone who are of sound mind. But here a very basic distinction is called for. Infants before the use of reason, and the insane, are of course incapable of knowing the Natural Law, or at least of knowing it fully, even in its essentials; and hence they are not formally subject to it in the sense that they are bound to observe it. Yet, because the law objectively is nothing else than the prescribed right order of human nature, all who have human nature are subject to it radically or fundamentally. Hence no responsible agent may with impunity disturb that order, even in insane persons or infants; and what is still more important, the law, radically existing in them and in all mankind, forms the foundation of human rights.

The Natural Law evidently forms the basis of all law; yet it does not exclude further enactments which are consistent with it. It leaves room for positive law, either

divine—promulgated by God Himself, as was the Mosaic Law and the Law of the Gospel of Jesus Christ—or human. The positive divine law is outside the scope of this article. We pass directly to the consideration of positive human law. To understand its foundation, a word about the philosophical basis of civil society is necessary.

Basis of Civil Society

A society is a stable moral union of persons for mutual cooperation toward a common end. Some societies, for example a social club, or a commercial union, owe their origin to free association, and may be termed conventional societies. But there are two societies—domestic society or the family, and civil society or the state—which are necessary or natural in the sense that they come into existence in response to essential human tendencies and character, to provide for needs which spring from human nature itself. They are necessary, not in a rigorous physical sense, but morally. That is to say, they are founded in and dictated by the Natural Law. Of the two, we are directly concerned only with civil society.

The social character of man, his natural aptitude and need for social cooperation in order to attain common temporal welfare, can scarcely be doubted by the common-sense mind—though it has been dogmatically set aside by dreamers such as Rousseau and Hobbes. This essentially social character of man demands the establishment of the state. The institution of civil society with its fundamental structure is therefore from the Natural Law. God, the Author of man's nature, directly confers upon this natural society the authority without which its existence would be impossible.

The Natural Law upon which the civil union is founded confers upon society the power of governing its members, within the limits which are defined by the objects of the society itself. Consequently, the legitimate rulers of the state are invested with authority from God; and while they act within the limits of their power, he who resists them disobeys the ordinance of God.⁴

Derivation of Authority

Thus far we are on absolutely common ground. Yet even sound philosophy is not cast in one mould, and at this point there is a theoretical divergence between two schools. The point at issue between them is really a minor one, since both agree that the authority of the state is from God and that it must be exercised with due regard for the rights and welfare of the people. Both agree also that various circumstances contribute to prepare groups of families for the formation of states. Supposing this proximate readiness of a multitude of families for the formation of a civil society, the older and classical Schoolmen hold that the authority (from God) rests first in the people, so that in the very erection of the state by the explicit or implicit consent of the people, the authority to govern is transferred by them to the designated rulers. The chief exponents of this theory, following Saint Thomas, were Bellarmine and Suarez. It has been ably shown that their ideas, developed at length in the controversy against James I on the "divine right of kings," formed the foundation

³ St. Thomas, S. T. I-II. 90. 4.

⁴ E. Cahill, *The Framework of a Christian State* (Dublin: Gill and Sons, 1932), p. 460.

of the political theory of Edmund Burke⁵ and of James Wilson.⁶ Those ideas exerted a potent though indirect influence on the framers of the Declaration of Independence and the Constitution of the United States.⁷ The American formula for this doctrine is that "governments derive their just powers from the consent of the governed."

A few modern philosophers, however—Taparelli, Liberatore, Meyer, Cathrein, Cronin, and others—while admitting that the explicit consent of the people is one legitimate basis of government, believe that the same circumstances which gradually prepare a multitude of families up to the point of constituting a state, may sometimes both constitute them into a civil society and designate certain persons as alone fit to wield the authority of the state. Fundamentally, however, this view differs very little from the more authoritative doctrine which requires the formal consent of the people.

For where a concurrence of circumstances requires the formation of a state as essential for the public good, and manifestly designates for the same end a certain individual or set of individuals as the only persons in whom the ruling authority can reside, it is certain that the implicit consent of the people may always be presumed. On the other hand, from the manifest and persistent withholding of such consent by the people, one can reasonably conclude that the required natural conditions are also wanting.⁸

Because of its more striking accord with the first principles of our American government—which are discussed in the following article—as well as because of the higher authority of its exponents, we prefer the older theory, which has won followers also among the best modern philosophers: Billot, Costa-Rosetti, Mendive, Brosnan, Macksey, and others.

From this equality of all men, as men, under the law of God, Augustine concluded that civil authority must come from God. And from it, understood in the same sense, Bellarmine concluded, as Justice Wilson after him, that civil authority belongs, as to its primary natural subject, to the whole civic body.⁹

True philosophy, then, derives the authority of the state ultimately from the Author of natures, and for that very reason requires that it serve the common welfare of the people. Of this system Edmund Burke said: "On any other scheme I defy any man living to settle a correct standard which may discriminate between equitable rule and the most direct tyranny."¹⁰

Equitable rule or tyranny—that is the alternative. Do all who shout for democracy and decry dictators today really know the difference? Or are they repeating catch-

words? The difference is *not* in the *form* of the government.

... democracy may exist, at least in theory, even with a non-representative type of government. Saint Louis, King of France, as he rendered judgment under the oak of Vincennes, certainly ruled no governmentally democratic state; yet Saint Louis' regime was in a social sense much more democratic than are some of our city wards with their skillfully engineered pressure on the individual citizen, or some of our rural satrapies governed by dynasties of the old stock who have lost every American tradition except that of vote-getting and taxation.¹¹

And the government of General Franco is by all standards more substantially republican than that of the Soviets whom he drove out of Spain after their thin and tragic masquerade of "republicanism." Not the form of a government, much less the bare, brazen pen-name, "republic" or "democracy," but the substance of *justice* makes the difference between equitable rule and tyranny. And justice in government consists basically in respect for natural rights.

Natural Rights

Here we are once more in direct contact with the Natural Law. Right is an inviolable moral power to do, to hold, or to enact.¹² Since it is a moral concept, and since the source of moral order is law, right is the formal effect of law; and rights may be classified according to the laws from which they spring. The most important are those conferred by the most fundamental of all laws, the Natural Law. They are founded on the dignity of the human person, which in turn rests entirely on his God-given destiny. Every person has his individual destiny, the attainment of his last end in God, and this is morally inviolable. No human person—not even an infant in the womb or a so-called "socially useless" imbecile—can be used as a mere means for the good of others; he must be free to attain his destiny. Moreover to help him to do so, God, in ordaining man's nature has placed certain things within his immediate control. These are sacred, and his dominion over them is sacred, under God. From these fundamental concepts, Vermeersch draws the following definition of natural right, substantially identical with the one given above: "Right is the inviolable autonomy of a person and his inviolable prevalence or dominion over the things which are subordinated to him for the attainment of his last end."¹³

What harmony there is between the definition just quoted and: "We hold these truths to be self-evident,

⁵ McGann, "The Political Philosophy of Edmund Burke," *Thought*, V, 474.

⁶ W. Obering, "James Wilson's Fundamental Principles of Law," *Thought*, V, 66.

⁷ F. X. Millar, "Scholastic Philosophy and American Political Theory," *Thought*, I, 112; "The Origin of Sound Democratic Principles in Catholic Tradition," *Thought*, II, 594; "Saint Augustine and Cicero's Definition of the State," *Thought*, IV, 254; "Hauriou, Suarez, and Chief Justice Marshall," *Thought*, VI, 588; "St. Augustine and Political Theory," *Thought*, V, 272; "The Modern State and Catholic Principles," *Thought*, XII, 42; "Philosophy of the Constitution," *Thought*, XIII, 48; "The Constitution and Belated Principles," *Thought*, XIII, 283; "Unpopular Essays in the Philosophy of History" (Fordham University Press, 1928).

⁸ Moss, "Catholic Antecedents of Maryland Liberties," *Thought*, VII, 181; "Saint Thomas Aquinas and the Constitution," *Thought*, XII, 567.

⁹ Obering, "Our Constitutional Origins," *Thought*, XII, 587; "James

Wilson's Fundamental Principles of Law," *Thought*, V, 66.

¹⁰ O'Rahilly, "The Sovereignty of the People," *Studies*, X, 39-277; "The Significance of Suarez," *Studies*, VI, 582; "The Democracy of St. Thomas," *Studies*, IX, 1.

¹¹ Ryan and Millar, *The State and the Church* (New York: Macmillan, 1922).

¹² Ryan, *Catholic Doctrine on the Right of Self-Government* (New York: Paulist Press).

¹³ Cahill, *op. cit.*, p. 461.

¹⁴ W. Obering, "Our Constitutional Origins," *Thought*, XII, 604.

¹⁵ Burke, *Tracts on the Popery Laws*, Ch. III, Pt. I, quoted by Millar, "The Modern State and Catholic Principles," *Thought*, XII, 56.

¹⁶ J. LaFarge, "Christian Democracy Pledges Our Liberties," *The Catholic Mind*, Jan. 8, 1939.

¹⁷ LeBuffe and Hayes, *Jurisprudence* (New York: Fordham University Press, 1938), p. 134.

¹⁸ A. Vermeersch, *Theologia Moralis*, II, nn. 340-341.

that all men are created equal, that they are endowed by their Creator with certain unalienable rights, that among these are life, liberty, and the pursuit of happiness. . . . That to secure these rights, governments are instituted among men."¹⁴ To secure, not create natural rights—this is the function of government.

Among the most sacred of natural rights is the right to worship God, to provide for the religious and secular education of one's children, and to propagate actively the true religion, supposing of course that God has chosen to establish one by His divine positive law. Totalitarian states today are openly claiming the power to suppress these rights as if their validity depended on the concession of the state. Their so-called laws, to the extent that they invade natural rights, have no claim to obedience. Being in conflict with the Natural Law which is the ordinance of God's Wisdom, they cease to be "rules of reason" or "for the common good." They fall from the category of law and are mere acts of tyranny. And a government by a democratic majority, even on the American side of the Atlantic, would be equally tyrannical, and for the same reason, were it to attempt the same invasions of natural rights.

Liberty and Authority

To what extent personal liberty is a natural right cannot be stated by any rule of thumb. Both individual human rights and government authority are based on the Natural Law. The problem of human government has ever been to keep a proper balance between them. Some natural rights, for example the right of private property, are subject to a degree of reasonable regulation by the state. The extent to which such regulation is reasonable and for the common good must be determined by considering both the individual and the social aspects of property as an institution of the Natural Law.¹⁵ "Social justice," for the Communist, means something that must be satisfied by "sadistic violence"¹⁶ against a hated class of society. Yet social justice has a true meaning. Where shall we find it? In the Natural Law. Although it is plain that a full program of social justice does not exist ready-made in man's rational nature—much less is it in his lower selfish tendencies, which are what the Liberal school of Herbert Spencer meant by the "law of nature." But there is no natural norm by which the balance can be kept between personal liberty and government regulation, other than the Natural Law as we have explained it. Deviations to one side or the other are aberrations from that law. If state authority acknowledges no limitations you have a totalitarian state—call it Fascism, Naziism, or Communism, it is all one; if individuals claim unrestrained "liberties" to do as they please, you have "rugged individualism" which is the respectable name for anarchy.

¹⁴ Declaration of Independence. Cf. Obering, "Our Constitutional Origins," *Thought*, XII, 587.

¹⁵ Leo XIII, *Rerum Novarum* (America Press). Pius XI, *Quadragesimo Anno* (America Press). Nell-Breuning-Dempsey, *The Reorganization of Social Economy* (Milwaukee: Bruce, 1937).

¹⁶ Millar, "The Modern State and Catholic Principles," *Thought*, XII, 50.

¹⁷ Constitution of the United States, Amendment I; Leo XIII, *On*

The faculty of expression by speech and writing is natural to man, and its use, within the limits of due order, is a natural right. Freedom of speech and of the press have, however, definite limits assigned by the Natural Law itself. To spread moral filth and deadly falsehood by speech and press is no more a *right* than to poison the water-supply or pour lethal gas into the air. A speaker or pamphleteer whose effusions tend to subvert all lawful authority has no strict right to be heard; and a *free* press which is the tool of selfish interests or of foreign propaganda may do the state and the people infinite harm. Against these evils the state has the right and duty to protect itself and its citizens. However, the danger of abuse of the power of censorship by the state may be an even greater danger. And hence, as a practical choice of the lesser evil, it may be wise to tolerate up to a certain point the abuses of speech and press rather than suffer the risk of undue restraint upon liberty of expression. This is the moral basis, and the only one, for constitutional guarantees of freedom of speech and the press.¹⁷ We believe these provisions are wise; but they should not be taken for direct declarations of natural right. They put upon the possessors of truth a grave obligation to propagate it by speech and press, lest the public moral diet consist entirely of tares. The civil law itself, of course, recognizes limits to the freedom of speech and press, in the law of libel, the law of copyright, the law regarding contempt of court, the police power of the States, and in other ways.

A certain European government whose inspired disciples in the United States clamor for and enjoy, here, a degree of freedom of expression which is certainly beyond that allowed by the Natural Law, is not notable for allowing freedom in its own regime. The only kind of propaganda which is explicitly allowed by law in Soviet Russia, and the only one which is tolerated in fact, is *anti-religious propaganda*.¹⁸ Thus, freedom of speech is claimed in the United States to violate the Natural Law here; and a tyrannical censorship is exercised there, to violate the Natural Law by proscribing what is undoubtedly a natural right.

The Constitution of the United States

The founders of our government—"We, the people"—building on the foundation of Natural Law, provided for national authority, and at the same time erected safeguards against tyranny either by individuals or by a majority. These safeguards are contained: (1) In the democratic form of government, in which the people govern themselves through elected representatives who are ultimately responsible to the people; (2) In the Constitution¹⁹ as a government of limited powers, expressly prohibiting certain acts of authority to the general government, and reserving to the States or to the people all powers not

the Christian Constitution of States; Vermeersch, *Theologia Moralis*, I, n. 155; Macksey, *De Ethica Naturali*, p. 343, Scholion 5.

¹⁸ Soviet Constitution, Article 124; Sheen, *Communism and Religion* (New York: Paulist Press); Sheen, *Communism Answers the Questions of a Communist* (New York: Paulist Press).

¹⁹ Constitution of the United States, Amendments I to X; *The Story of the Constitution*, U. S. Constitution Sesquicentennial Commission, 1937.

delegated to the United States nor prohibited to the States; (3) In the separation of the legislative, executive, and judicial powers, so that each can act as an effective check on the others. They ill serve the cause of free government who subvert these safeguards, whether it be by claiming governmental powers which violate the Bill of Rights, or by attempting, through undue executive control over Congress and the Supreme Court, to concentrate in one hand the powers which the Constitution has separated. It is a heartening sign for democracy when the people show the power to shake off such assaults even when launched by powerful and popular men.

The Constitution of the United States is a tower of strength both for government and for liberty. However, the ultimate safeguard of both is not the super-structure but the foundation on which it rests. The Constitution cannot long survive if the spirit which inspired it dies. The spirit is not mere national sentiment. It consists rather in the true philosophy of liberty and authority, a philosophy be it noted, which rests entirely on a creationist metaphysic and upon the recognition of man as rational—as the preceding article has pointed out.

The course between tyranny and anarchy is not too narrow; yet some light, at least the light of natural reason, is needed to find it. The true course is indicated by the concepts of law and of right which we have tried to explain in the light of natural reason: Law—a rule of reason promulgated by competent authority, for the common good; and Right—the inviolable autonomy of the human person and his inviolable prevalence or dominion over the

things that are subordinated to him for the attainment of his last end, God. Our forefathers had the light. They found and chose the course. Who will help America, now, to keep it?

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Legal Philosophy in the United States

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IN OUR United States of America, there has been comparatively little said and less written about legal philosophy. Yet our people have done more than any other nation of modern times to make law and government philosophical in a true sense. Our reticence in matters of philosophical discussion and our failure to produce a legal literature, available for teachers and students, became emphatically plain some thirty years ago, when the Association of American Law Schools undertook the task of promoting the study of legal philosophy. A committee, appointed to inaugurate the work of encouraging philosophical study of the law, learned not only that American scholarship had nothing adequate to offer, but that practically no treatises or suitable sources for study were to be found in the English language. They, therefore, deemed it necessary to begin the labor of translating works produced by continental scholars. After about fifteen years of very commendable work, the *Modern Legal Philosophical Series*,¹ in twelve volumes, was offered to the law schools and law students of the United States. Apparently, there are no encouraging results to indicate that

the laudable purposes of the Association and the committee have been attained.

Law school professors, members of committees and translators were all, no doubt, inspired by one aim and hope, that of encouraging and supporting a more thorough and general study of legal philosophy. They are neither to be charged nor credited with sponsoring the type of teaching contained in the *Modern Legal Philosophical Series*. To a very great extent the teaching of the series is such that imputed authorship or support might be considered as constituting a very grave charge. This fact, rather than a marked decline in the philosophical movement from the enthusiasm which characterized its inception, may account for the failure of the *Philosophical Series* to exercise an appreciable influence on the study of law in the United States. Since the authors repeatedly inculcate theories that are directly hostile to elementary principles of popular government, we may count the absence of effect upon our legal thought as a fortunate escape rather than a serious loss. Inasmuch as law follows

¹ *Modern Legal Philosophy Series* (New York: The Macmillan Co.)

philosophy even as action follows thought, it is not difficult to trace in the works of Von Ihering, Berolzheimer, Stammler, and Kohler germinal principles of the state apotheosis and irresponsible arrogance which have darkened Europe with chaos and carnage. There is reason indeed to be profoundly grateful that our scholars have not produced so copiously the letter which may be lethal, and that leaders who organized and maintained our government have been more effectively actuated by the spirit which leads to a more prosperous and contented life. However, the theories propounded in the *Series* may serve as convenient and helpful bases for comparing and contrasting unproductive speculation with effective action.

Philosophical Foundations of Our Government

Governmental organization began in the United States with an affirmation of faith in God. It began indeed where the Book of Genesis begins, with the assertion of man's creation, and the rights guaranteed by the Creator. The men who established our government were convinced that necessity compelled them to dissolve the bonds of political union which had connected them with another people. They announced, in severing ancient ties of political alliance and establishing a new and independent government, that they were but assuming a separate and equal station—to which they were entitled by the laws of nature and of Nature's God. In thus taking a place among the powers of the earth, they yielded to what they considered "a decent respect for the opinions of mankind," both in declaring the compelling causes of separation and in giving a clear, succinct statement of their governmental philosophy. They put more sound philosophy of law and government into the Declaration of Independence than can be found in the twelve volumes of the *Modern Legal Philosophy Series*. As a matter of fact, the twelve volumes fail not only by deficiency, but advocate, or cite with approval, numerous statements and tenets which contradict implicitly or specifically, and positively and emphatically, cardinal concepts of democratic government.

Imbued with an abiding trust in Divine Providence, the Founding Fathers made manifest their belief in God as the foundation and inspiration of their political philosophy and faith. They not only grounded the colonial title to a separate national existence on the "laws of nature and of nature's God" but on analogous grounds they claimed for individuals as well, rights which were theirs because of their human nature and because of their creation. To them God was the Author of Being, the Source of Right, and the Reason for their relation of equality, one with another. "We hold these truths to be self-evident, that all men are created equal, that all are endowed by their Creator with certain inalienable rights, that among these are life, liberty, and the pursuit of happiness."

Some who support and praise our form of government, speaking with more enthusiasm than accuracy, refer to our Constitution as if it were a source of right, or assert that certain immunities or privileges belong to them be-

cause they are given by the Constitution. Our Constitution is not, primarily, a source of right, nor is it, indeed, a philosophical document. It is rather an instrument, of practical nature, intended to translate into action the principles of the Declaration of Independence, making operative the philosophy the Declaration teaches and correcting the abuses it enumerates. It is the proper function of government to protect rights, not to grant them. This was well understood by the founders of our Republic, and they did not desire to establish a government that would or could be a source of right, for well they knew that a nation, claiming the prerogative of granting rights, might insist on taking them away at will, without notice and without reason, save that of Shylock, "It is my humor." They based their claims to life, liberty, and the pursuit of happiness on natural and divine law, believing it to be the major end and aim of human laws to protect, defend, and preserve the rights given to men by their Creator.

An Anti-Democratic Theory

The authors of the *Modern Legal Philosophy Series* did not regard God as the Author of Being, the Source of right, the Reason for equality among men. When they evidence any comprehension of a supreme being, they propose some vague concept of the evolutionist or the pantheist, who usually begin with ruling God out of His universe and come finally to doubting or denying His existence. Witness, for instance, the words of an eminent jurist quoted in Stammler's *Theory of Justice*, "It is enough for us that the universe has produced us and has within it, as less than it, all that we believe and love."² It seems to be a part of their consistent state deification, not only to assert that fundamental human rights are derived from state grant, but even to maintain, strangely enough, that men owe their being to the state. This is the doctrine of Rudolph Stammler—and it is not gleaned from his work by mere inference or interpretation. It is made manifest in clear and emphatic language scarcely susceptible of misunderstanding or misconstruction. "As an individual," says Stammler, "is and has nothing which he does not owe to the community to which he belongs, so every exclusive power of disposition that he has, comes to him from it."³ Lest this be taken as an isolated passage, another is offered with the assurance that these are representative of many more which could be cited but for limitations of space. "But the individual would not exist without the community. From the community he has received what he is and what he can do. He owes to the community his being, his true being."⁴

Obviously if man owes to the state his being, all he is, all he has, and all he can do, he must look to the state for his rights to life, liberty, and the pursuit of happiness. The author follows his deceptive premises to their logical, but pernicious, conclusion, and though it be only the consistency of delusion, Mr. Stammler is consistent. "The rights," he tells us, "which a man calls his own, he has because he has received them from the law."⁵ Again, as

²Rudolph Stammler, *The Theory of Justice*, trans. Isaac Husik (New York: The Macmillan Co., 1935).

³*Ibid.*, p. 246. ⁴*Ibid.*, p. 329. ⁵*Ibid.*, p. 146.

if to make this strange doctrine still more plain and emphatic, we are told by the same author: "The individual in himself, taken merely as such, is for social consideration nothing at all. He has not merely taken everything he has from the community, but is still continuing to take from it."⁶

Mr. Stammler is not a solitary protagonist, nor does he bear a sole responsibility, in sponsoring theories that are distinctly anti-democratic. If called to bar for the doctrine herewith challenged, he might page his fellow-countryman, another author of a volume in the *Modern Legal Philosophical Series*, a former president of the International Society of Legal and Economic Philosophy at Berlin. Fritz Berolzheimer, by way of supporting his colleague in denying the existence of inalienable rights derived from man's creation, would say, "There are no primitive or inalienable rights. Man acquires rights only as a member of a community."⁷ Neither is Mr. Berolzheimer less bold than his brother philosopher in accepting the manifest corollaries of state creation and asserting the dependence of individuals as owing all they have to the state. "To the state," says Mr. Berolzheimer, "belong the people, the land, and the sovereignty." "The sovereignty of the people is a meaningless term."⁸ He also joins Mr. Stammler in minimizing the importance of the individual. "The welfare of the individual," he tells us, "is never a purpose in itself, but ever a means of securing social welfare."⁹

To show the sharp antithesis between the theories of these legal philosophers and the thought that has been dominant in the United States, the words of Mr. Justice James Wilson, in *Chisholm v. Georgia*, may be of value. On one side of this controversy was a sovereign state, and on the other, a lone individual. Mr. Wilson, writing an opinion in favor of the individual, insisted that he was interested in the cause, and not the parties, whether numerous and powerful on the one side or weak and alone on the other. "Causes," he said, "and not parties to causes, are weighed by justice in her equal scales; on the former solely her attention is fixed: to the latter she is, as she is painted, blind."¹⁰

Equality of Individuals

That society can have no rights more sacred than those of the individual is a proposition that is basic in our philosophy of government. It is as an individual that man derives from his Creator rights so essential to human existence and human welfare, that they cannot be alienated. President Lincoln, at Gettysburg, bore witness that this truth, explicitly stated in the Declaration of Independence, remained as the warp in the woof of our political fabric. "Four-score and seven years ago our fathers brought forth on this continent a new nation, conceived in liberty and dedicated to the proposition that all men are created equal." Whether or not they are impelled by force of

logical sequence from other hostile tenets, eminent authors in the *Legal Philosophy Series* reject our structural principle of equality before the law. "Is the concept of justice," asks Von Ihering, "based upon the principle of equality in the law? What is there so great in equality that we measure the highest concept of right—for that is what justice is—by it? Why should law strive after equality, when all nature denies it?"¹¹ Lest Von Ihering appear unsustained by his fellow philosophers, we may call to his aid a comrade in fallacy, though not a countryman by birth, Leon Duguit. "Men are not born equal," observes Duguit, "they are born different. . . . The natural fact, as they called it in the eighteenth century, is not that men are equal, but that they are unequal, and the general tendency of evolution is towards an even greater inequality."¹² It may be very true that men differ widely in advantages and opportunities, in reputation and honor, in qualities and powers of mind and body; yet it is equally true, that so far as regards the right to live, to enjoy liberty, to pursue happiness and trust in the law's protection, the greatest of mortal great and his lowest lackey stand together on terms of complete equality, just two free men in a free country.

Source of Rights

Men are equal and endowed with the same natural rights, because they owe both their being and their rights to the Author of their common nature. If man is, by gift of God, vested with inalienable rights, he must be privileged to adopt such measures as seem to him best calculated to provide for their maintenance and enjoyment. This brings us directly to the obvious necessity and primal purpose of human authority, indicating that free and equal men may of right establish, preserve and control governments, to promote their safety and happiness. Hence the statesmen who drafted our Declaration of Independence, after enumerating the principal inalienable rights of man, continued, "To secure these rights governments are instituted among men deriving their just powers from the consent of the governed." Essential as these truths clearly appear, consistent reason would seem to postulate their denial by the totalitarian philosophers — and these are not found wanting in the requirements of consistency. If men owe their being and all they have and can do to the state, if they belong to the state even as the soil of the earth, it must follow that they cannot establish, maintain, and control governments, and that there can be no derivation of power from the consent of the governed.

Readers therefore will suffer no shock of surprise when they find in the long drawn chapters of Berolzheimer, "The sovereignty of the people is a meaningless term." Neither will they think it strange when they discover that the author makes his position even more emphatic by saying, "In its origin the State is remote from the will of

⁶ *Ibid.*, p. 347.

⁷ Berolzheimer, *The World's Legal Philosophies*, trans. Rachel S. Jastrow (New York: The Macmillan Co., 1924) p. 197.

⁸ *Ibid.*, p. 257. ⁹ *Ibid.*, p. 247.

¹⁰ Wilson, *Chisholm v. Georgia*, 2 Dallas, 1793.

¹¹ Von Ihering, *Law As a Means to An End*, trans. Isaac Husik (New York: The Macmillan Co., 1924) p. 276.

¹² Fouillee, Charmont, Duguit, and Demogue, *Modern French Legal Philosophy*, trans. Scott and Chamberlain (New York: The Macmillan Co., 1921) p. 274.

the people."¹³ Surprise, however, may be conceded as incident to intelligence, when readers meet Von Ihering's confirmation of his countryman's philosophy, "But the experience of all times has shown that the force of the state may have the entire population against it, and yet be in a position to maintain its power."¹⁴ This bewildering statement, a possible deduction from teachings of Stammler and Berolzheimer, is confirmed by Josef Kohler¹⁵ in propositions too long to be quoted here. To make evident how far these eminent authors depart from our fundamental concepts of legal philosophy, Chief Justice Marshall may be cited as a competent witness. "That the people have an original right to establish, for their future government, such principles as, in their opinion, shall most conduce to their own happiness, is the basis on which the whole American fabric has been erected."¹⁶

The Constitution

Chief Justice Marshall, in the words cited from *Marbury v. Madison*, only paraphrased the sentiment expressed by those who formulated the fundamentals of our legal philosophy and who were planning even in 1776 to establish a new government, "laying its foundations on such principles and organizing its powers in such form," as would seem to them "most likely to effect their safety and happiness." When Lexington and Yorktown had become memories of tragedy and triumph, and when the last argu-

¹³ Berolzheimer, *op. cit.*, p. 257.

¹⁴ Von Ihering, *op. cit.*, p. 236.

¹⁵ Kohler, *Philosophy of Law*, trans. Adalbert Albrecht (New York:

ment of kings had ratified a resolution declaring the united colonies free and independent states, fifty-five men met in convention at Philadelphia to frame a constitution for the United States of America. Being ordained and established by solemn sanction of a free people, this document made effectively enduring the assertions of liberty proclaimed amid the opening canonades of revolution. Powers of government were distributed among three departments, each being limited to its proper sphere of action and prevented from encroaching upon or absorbing specific functions of the other two. Rights considered too valuable to be jeopardized by current changes in national policy, were made expressly exempt from possible invasion or violation by either legislative or executive authority. Powers of government could be exercised only by consent of the governed, because the people retained within their own firm grasp, effective means of ultimate control.

Constitutional government in our country has proved to be a most successful agency in translating few, but exceedingly comprehensive, philosophical principles into vital and lasting realization. Experience under a written constitution, through a century and a half of vigorous, national growth, has shown with conclusive emphasis that the people of the United States of America, who have said and written so little about legal philosophy, have indeed done very much to make the law of the land follow and interpret philosophical truth.

The Macmillan Co., 1921) p. 294.

¹⁶ Marshall, *Marbury v. Madison*, 1 Cranch 137, 1803.

Reality the Measure

Editorial Note

The local Police court or the constitutionality of an Amendment seem quite remote from the metaphysics of the dependence of creatures, or man's obligation of freely conforming to his own nature. Yet the sane and successful laws are just those which are fitted to men as men *really are*; and the "science of being" surely has to do with realities such as men. The judge need not be a metaphysician, but he, and the framers of laws, should not be strangers to the science of "right and wrong." And what are the principles of morality if they are not the application to the conduct of human beings of the transcendent truths about *being* and *good*? The individual citizen, though he be no ethicist, is most intimately affected if the fundamental statutes of the state are not squared with the *real* in man and in the things about him.

Ignore *why* man exists; try to order realities, to measure them by anything except the *Real*, and see the result. History has long written and at this hour is writing the record of misery and warped order which follow the absolutizing of relatives and the divorce of living from truth. Means are mistaken for ends; the State or an abstract Humanity becomes deified; the individual is crushed. Tyrants rise; laws are galling bands of steel. Law, by another aberration, begins to *give* rights which it merely

safeguards. Truth loses oneness; wrong is right when endorsed by garrisons. Intellect (by which man can possess *all* the real) is chained to sit and look upon matter, scribbling empiricism in the name of Science which lays claims to Wisdom's throne. But reason is prolific, and, enslaved by ambition or lust, fertilized with unrealities, cramped by emotionalism, she may produce monstrous ingenuities, Frankensteins of ordinances and "systems" which tyrannize and destroy.

Let reason, unclouded and unprejudiced, look steadily at man and all that is *real* and write laws for him in accordance with the changeless in his nature. Then law is not only successful—as a project of "social engineering"—but it safeguards the most precious of man's rights and helps attain his consummate happiness.

Philosophy has much to do with law, so much that American Democracy itself is in danger unless the philosophical foundations of its laws be made secure. The note sounded in the introduction to this symposium should be echoed, hopefully, here in conclusion. Scholasticism has intact the spirit and foundations of our Democracy. That spirit must be revived and diffused. Here is an opportunity, and a momentous responsibility.

Book Reviews

SAINT AUGUSTINE'S PHILOSOPHY OF BEAUTY

Emmanuel Chapman

Sheed and Ward, New York, 1939, pp. xiii + 114, \$3.50

Saint Augustine's interesting and valuable thoughts on beauty are gathered by Doctor Chapman into a coherent philosophy of the beautiful. Augustine was an artist as well as a profound thinker, so that his observations on beauty and on art have a double significance. Doctor Chapman, in full conformity with the Augustinian dialectic, begins with a discussion of the aesthetic experience. Here, the pleasure of art and of the contemplation of beauty is distinguished first from other experiences which do not convey pleasure or joy, and then from other pleasurable activities of man. It is the intellectual component which adequately differentiates mere sense pleasures from the higher joy of art. Then considering the constitutive elements of the beautiful object as conceived by Augustine, he finds them to be number, form, unity, and order. The discussion of number is taken up with the classification and analysis of the *kinds* of number; the analysis involves an account of the Augustinian theory of sensation. Unfortunately, those who are unfamiliar with the thought and works of Saint Augustine will find much difficulty in grasping what he meant by *number* itself. We are told that number is *not* "an arid mathematical abstraction" (p. 14), but little effort is made to inform us what it is.

The remaining sections, on the Nature of Beauty, the Judgment of Beauty, and the Meaning of Art, are excellent summaries of Augustine's thought. Particularly commendable is the author's continued insistence on "illumination" throughout the entire cognitive process and also in the practical order of poetic creation. The dependence of man on God in all things was a leading idea of Augustine's; and to slight it in any case would at least be an injustice to his thought. The brief account of the nature of Divine illumination is quite clear; in this account, Gilson's interpretation is followed. The Afterword, on Modern Painting in the light of the Augustinian Aesthetic, is at best problematical. The impression is given that certain reforms or revolutions in modern pictorial art are due to a return to Saint Augustine's ideas (as on page 83). This claim can hardly be substantiated; perhaps it should not have been made.

GEORGE P. KLUBERTANZ.

AN INTRODUCTORY COURSE IN PHILOSOPHY

J. A. Nicholson

The Macmillan Company, New York, 1939, pp. xxi + 508, \$2.75

The method and plan of this book deserve mention because of their suitability to an introductory course. The last half of the volume is devoted to substantial quotations from certain of the philosophical classics, "to acquaint the student directly with the writings of some of the great philosophers." The first half is made up of the author's discussions, which are at least somewhat provocative, concerning some of the main branches of philosophy and its history. At the end of each section are sets of searching questions to urge the student to thorough study and thought. The method is very commendable.

The book may introduce the student to a modern man's phantasm of philosophy—a controversial, rather futile, science-mocking substitute for wisdom, and for the *philosophia perennis*. But what of the oneness of truth! What of the metaphysics which asks its questions primarily about *being* and *beings* rather than about principles "by which we distinguish the real on the one hand from the phenomenal or the illusory on the other"? What of the sheer historical correctness of pronouncing that Aquinas' "mutilated" adaptation of Greek philosophy is based upon "fragmentary" knowledge? It is consistent with the superficiality which would label St. Thomas' philosophy authoritarian, to relegate Aristotle to a number of reading-references, and to omit *true* metaphysics as well as the very philosophical questions of psychology from an introduction to *philosophy*.

EDWARD T. FOOTE.

METAPHYSICA GENERALIS

R. Arnou, S. J.

Typis Pontificiae Universitatis Gregorianae, Rome, 1939, pp. 219

Father Arnou is professor of Metaphysics in the Pontifical Gregorian University and is already known to the readers of *The Modern Schoolman* by his textual work and notes on *De Quinque Viis Sti. Thomae ad Demonstrandam Dei Existentiam*.

Metaphysica Generalis is a textbook of the metaphysics of St. Thomas, containing five parts, and was written for the students pursuing their philosophical studies at the University. The five divisions of the work are: Act and Potency, the Notion of Being, the Properties of Being, the Predicaments, and Causes. The subject matter of some of the chapters is: Changeable being and act and potency, finite being and multiplicity, the multiplicity of beings in the same species, the transcendental and the analogy of being, the unity, truth and goodness of being, material, formal, efficient and final causes, substance and accident, supposite and person.

Certainly Father Arnou's book is not one of those innumerable texts whose *raison d'être* is that they succeed in bringing metaphysics down to the level of the student. It is definitely an attempt to lead the student up to the highest metaphysics of St. Thomas. The successful issue of this venture will rest largely upon the shoulders of a very good teacher. There is a tremendous amount of metaphysics packed into these few pages. Each sentence is really a topic sentence of a paragraph that has been suppressed. This necessary compression is compensated for by the completeness of the list of subjects treated, by the splendid order and division of the matter, and by the copious citations and references to the works of St. Thomas and others. These desirable factors render the work a valuable key to the study of Thomistic metaphysics. I recommend Father Arnou's book to the teacher of ontology and to the advanced student of metaphysics. Especially recommendable is the ontological approach at the beginning of the work. It begins by studying being which is real, changeable, multiplied and finite. Only after a discussion of real composition, of act and potency, does the author proceed to the study of the notion and the transcendental and predicable aspects of being. I believe that is the way St. Thomas, were he writing under present day circumstances, would have it done.

I was disappointed in one chapter, the one treating of the predicaments. The only predicaments treated are relations and qualities.

We hope Father Arnou will not keep us waiting long for a large work on Thomistic metaphysics, one not bound by the exacting and limiting requirements of a textbook.

JOHN J. O'BRIEN.

FREE MEN

Lynn Harold Hough

The Abington Press, Chicago, 1939, pp. 240, \$2.00

An enthusiastic response will be evoked from Christian humanists by the eloquent plea of Dr. Hough for a reasonable and reasoned humanism in an Incarnational setting, as opposed to the illogical and devalitized type of fleshly naturalism.

In a style at once sparkling and incisive, the distinguished Dean of Drew Theological Seminary, with experimental rather than metaphysical data, builds up a strong argument for freedom, although his repeated use of the term "free intelligence" is confusing. The deterministic contention is shattered and freedom is established as the indispensable basis of right thinking as well as of right living. Dr. Hough then examines the sad consequences of the rejection of freedom and freedom's God. The new naturalism, the new secularism, the new paganism, the new mechanism he excoriates with withering effectiveness. As a counter-attack against these implications of Godless philosophy he pleads for the "new humanism" in which an ever-increasing number of men, schooled in "Christian Literacy," "will endeavor in the twentieth century as St. Thomas in the thirteenth to see Christianity and to see it whole."

Free Men makes inspiring and informative reading. The search-

ing analysis of the writings of the outstanding "interpreter of the mind of India," Sir Sarvepalli Radhakrishnan, reveals the critical quality of Dr. Hough's mind. The liberal praise accorded the Hutchins' philosophy of education, and the forceful condemnation of that advocated by the Dewey school indicate the author's attitude towards the objectives of higher education. The sympathetic treatment of Paul Elmer Moore is indicative of the humanism which Dr. Hough champions.

Thus the estimate of these eleven essays can be concluded on a note of hearty approval and commendation. The twelfth and final essay, however, must be read with reservation. For although we admire Dr. Hough in his zeal and enthusiasm for the Christian reconstruction of Society, yet we cannot agree that to the followers of inspirational John Wesley belongs even the major share of effecting this high objective.

LOUIS J. TWOMEY.

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DIOGENES OF SINOPE

Farrand Sayre, Ph. D.

J. H. Furst Company, Baltimore, 1938, pp. 139, \$2.00

Champions of pretended humility will welcome this further vindication of Antisthenes from the charge of being the first Cynic. While the evidence Mr. Sayre presents is only fragmentary, it is enough to make the student of Greek Philosophy desire to investigate the suggestion further. (A. E. Taylor made this suggestion in his "Socrates.") The author has combed many documents for quotations as to what the Cynics really were, how foreign their tenets were to those of Antisthenes, and how they point in all probability to Diogenes of Sinope as their father and founder. The most valuable contribution of the book is the establishing of a direct relationship between Cynicism and Indian philosophy, thus exonerating Socrates from the fatherhood of Cynicism.

The proof-reading should have been more careful; and various sections of the monograph as well as individual paragraphs seem thrown together with little regard for unity or proportion. He would be a clever reader indeed who could put this book down and say just what Cynicism meant, and what Diogenes meant to Cynicism. Quotation trips upon the heels of quotation; the text itself is overburdened with unscientific references, and, as a result, the thought has little chance to flow.

EDMUND ZIEGELMEYER.

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RELIGIONS OF UNBELIEF

André Bremond, S. J.

The Bruce Publishing Company, Milwaukee, 1939, pp. xv + 163, \$1.75

When rationalism makes of itself a religion, it is well for the philosopher to discuss religion. H. G. Wells, Will Durant, and marginal tribes testify to the need of an efficacious religion. The argument of the book is, that unbelief—rationalism—fails as such a religion, and that a "religion of belief" with a supernatural object is necessary and alone reasonable.

A popular prejudice concerning Hellenism is very capably refuted in the first chapter. The soul of Greek thought and culture was religious, not a sterile rationalism. The following chapters discuss Spinoza, who makes proud reason God, Russell's "Religion without God," and Well's Manichean Diety. These fail, not only in their pragmatic goal regarding social and individual betterment, but they are distinctly unreasonable. Whether science outmodes religion is the question of the fifth chapter. With abstractions for its matter, science is simply outside its province when it attempts to pronounce on the existence of God at all. And science (man's ingenuity) fails to supply either a reasonable or an effective foundation for even the most rudimentary morality. The concluding chapters of this very pleasant and scholarly study proceed: Reason finds meaning in life, dignity for the individual, and value in human acts and in the universe, only if there be a divine transcendence. Of course it is a human prejudice for reason to hate the mysterious; but the unpredictability of the Providence and revelation of a God, quite appropriately free and omnipotent, does not constitute such a suprarational Being unreasonable. A religion, however, which offers nothing higher

than fallible reason to be worshipped, mere humanity for inspiration, nothing but abstraction to be loved, is a religion of unbelief and of unreason. And the conclusion of the book is: "Give us God."

Perhaps the clarity of the whole would have been enhanced if the definition of religion (developed in an appendix) had been summarized in the otherwise excellent introduction. Thus the reader would have been directed to make an induction throughout the book concerning the elements of religion. Then too, although the author's intention is to expose the reasoned consistency and efficacy of belief in contrast to rationalism's unbelief, it would be well to stress that the "cosmic God," ignored but admitted by the rationalist, is, by strict reasoning, necessarily identical with the supernatural object of belief.

P. Bremond's clear thought is gracefully expressed in an English style happily suited to philosophy. A controversial tone is avoided, and the author's breadth of view and rich depth of background are manifest. This penetrating analysis of rationalist religion and careful discussion in such brief compass should be valuable to the novice as a broad introduction, and to those more widely read as a synthesis.

EDWARD T. FOOTE.

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ST. THOMAS AND THE GREEKS

Anton C. Pegis

Marquette University Press, Milwaukee, 1939, pp. 107, \$1.00

The present volume adds another title to the increasingly appreciated series of Aquinas Lectures published under the auspices of the Aristotelian Society of Marquette University. The Society was fortunate in securing as its guest lecturer for 1939 Dr. Anton C. Pegis, whose consummate scholarship and genuine philosophic spirit have made him an acknowledged leader in American medieval studies.

If I interpret correctly, Dr. Pegis' remote purpose in writing this study was a veiled protest against those who would attempt to examine a philosopher apart from the intellectual pattern of the world in which he lived and thought. The philosopher receives his set and orientation from his own age; its problems are his problems, and he is battered by the same currents that flow through it. The philosopher of genius differs from the pedestrian hack only in that he rises above their common world "to an a-temporal realm of truth by successfully mastering its problems" (p. 2). This fact, apart from any consideration of the nature of philosophy itself, seems to demand that we approach each creative thinker with a careful regard to background, surroundings, influences—in a word, historically.

Dr. Pegis places the principal conflict of "the astonishingly turbulent intellectual life" of the thirteenth century in the sudden confronting of Christian thinkers with an extensive Greek and Arabian philosophical literature. He indicates St. Thomas' lifelong concern with the difficulties sure to follow on an incautious acceptance by his contemporaries of all the tenets of pagan philosophers. Especially dangerous for Christian rationalism was the Platonic-Plotinian-Avicennian principle that plurality is necessary to being; it was St. Thomas' special merit as a philosopher and an interpreter to have recognized that this principle formed the absolute dividing line between Greek and Christian thought. And since St. Thomas' decisions are seen most clearly in the problem of *creation*, it is to a discussion of this problem that Dr. Pegis devotes the principal portion of his work.

Those who relish the fine-edged subtleties involved in the demolition of an untenable intellectual position will enjoy these latter sections, in which the author considers the contention of Professor Lovejoy (*The Great Chain of Being*) that a great metaphysical contradiction, begun by Plato and carried through Aristotle and Plotinus, has been made an integral part of Christian thought by such thinkers as St. Augustine and St. Thomas. Urbanely, but with destructive incisiveness, Dr. Pegis lays bare the false interpretations underlying the theory.

"... if I am not mistaken, Professor Lovejoy has given an elaborate report of events that never happened. If we limit ourselves to the chief actors in this discussion, namely, Plato, Plotinus, and St. Thomas Aquinas, I say that Professor Lovejoy has described a contradiction in which they are made to share, but which they have not produced (p. 44)."

One feels a certain sympathy for Professor Lovejoy, as for Kingsley in the hands of Newman.

I wish that Dr. Pegis had been able to include a precise analysis of the nature of necessity and contingency in the philosophy of St. Thomas; even more, that he had indicated in some degree St. Thomas' reliance on a carefully elaborated theory of divine Ideas to solve the primary difficulty of creation, a solution to which St. Albert, citing Dionysius, had already pointed in answer to the principle of the Philosophers that *ab uno simplici non procedit nisi unum*. But these additions would doubtless have proved too technical for a lecture. Careful notes in substantiation of the text add much to the value of the book.

WILLIAM DOOLEY.

PROCEEDINGS OF THE AMERICAN CATHOLIC PHILOSOPHICAL ASSOCIATION, 1938

Edited by Charles A. Hart

The Office of the Secretary of the Association, The Catholic University of America, Washington, D. C., pp. 228

The fourteenth annual meeting of the American Catholic Philosophical Association last December was devoted to efficient causality. This volume includes papers on the subject read at the meeting by Oscar J. La Plante, Joseph Schneider and George Sperti Sperti, Leo R. Ward and Francis E. McMahon, Joseph M. Marling, and Rudolf Allers.

In his discussion entitled "Mechanism and Teleology in Current Biology," Ulrich A. Hauber takes on himself the difficult task of treating of the no man's land between the two sciences of biology and philosophy. Making allowance for the fact that here there are no landmarks of a common terminology, and commending many fine points in the paper, we believe that the question of substantial form is somewhat maltreated. A lingua Franca will not do for handling this basic point.

As one would expect, the meatier part of the *Proceedings* is found in the fine-print section of the volume headed "Round Table Discussions." In a carefully worked out paper, Vernon J. Bourke treats of "Experience of Extra-Mental Reality as the Starting Point of St. Thomas' Metaphysics." Sister M. Patricia and Bernard Vogt lead a lively discussion on the validity of sense perception, which, however, leaves the problem where it took it up. Finally, the sources of Plotinus' doctrine are discussed in a thorough and scholarly fashion by Joseph P. Fitzpatrick and Bernard J. Muller-Thym.

Included in this volume is the text of a radio round table discussion led by the president of the Association, Ignatius Smith. Discussions such as this, popularized by the radio or other means, should be encouraged, for they have all too small an audience, we fear, in this too literate world we live in.

WALTER J. ONG.

PARADISE PLANTERS

Katharine Burton

Longmans, Green & Co., New York, 1939, pp. x + 327, \$2.50

This book revises the popular picture of Brook Farm. Far from being a hare-brained venture by fevered idealists and with a rickety economic basis, foredoomed to failure, it was a well-planned and successful experiment in Christian socialism that attracted most of the best minds of the country and supported itself financially. Its leading spirit, George Ripley, based the farm on a share-holders' agreement, with a guarantee of five per cent interest. Half the day was given to work, the other half to cultural pursuits. Manual labor was required of all. As a business investment, it was, after succumbing to Fourierism, only too successful.

Paradise Planters is a well-documented research work cast in the form of a conversational novel. The portraits of Ripley, Emerson, Hawthorne, Margaret Fuller, Orestes Brownson, and other notabilities are clearly etched. The hero is Ripley. Hawthorne turns out to be a very amiable person. Emerson suffers eclipse: like so many flaming theorists, he showed a strange lack of enthusiasm about this very practical application of Transcendentalism to the business of living. Carlyle savagely pronounced the Farm "a Potato Crop." Evidently, their philosophy transcended even reality. The absence of a common

religious philosophy is stressed in effect throughout the book. Plainly, it acts as a chief disintegrating factor in the Brook Farm experiment.

No attempt is made at literary style, the result being a very readable book. The conversation is, however, distinguished without being stilted. The portraiture is chiefly spiritual and intellectual and yet one is made to see these persons as they probably appeared to their contemporaries.

LOUIS F. DOYLE.

THE KANTIAN PHILOSOPHY OF SPACE

Christopher Browne Garnett, Jr.

Columbia University Press, New York, 1939, pp. 287, \$3.50

We are here presented with a meticulous exposition of how space was regarded by Kant at the different stages of his mental Odyssey, and a final summation of "the contradictions in Kant's views" (p. 259). But the book is not all Kant. Newton, Clarke, Leibniz and Euler are reviewed as having complicated the problem which the recluse of Königsberg set himself to solve. The many inconsistent solutions which he gave have a common resultant in that *mélange* now known as Kantian philosophy.

Not the Ionians, nor Aristotle, not Aquinas nor Suarez, but Newton with his laws of mechanics is the starting point. Newton himself was cautious, but Clarke was rash enough to identify the famous *sensorium Dei* with the divine immensity and that in turn with space. Clarke rightly sensed that the greatest difficulty with this doctrine was the divisibility of space. It should be clear that space is divisible into contiguous parts. Ignoring this kind of division, he maintained that for parts to be divided they must be separated by a distance; but the distance itself is space; so Clarke claimed that space is "indivisible"! Leibniz on the other hand vacillated between relational and non-relational space (p. 53).

It was Euler who most directly affected Kant (p. 121). Both men recognized that space is neither a concrete particular nor a universal which is completely realized in each particular. Kant then jumped at the conclusion that it must be an intuition. How this doctrine kept Kant continually in hot water is told in the main portion of this book. The work closes with sketches of the doctrines of S. Alexander, Whitehead, and Broad. They reverse Newton's scheme of describing laws in terms of space, and describe space in terms of the laws of motion. Professor Garnett, in short, gives a laborious and impartial exposition of the treatment, or maltreatment, of space by men who show themselves to be but amateurs in the field.

JAMES A. MCWILLIAMS.

THE MORAL PHILOSOPHY OF SANTAYANA

Milton Karl Munitz

Columbia University Press, New York, 1939, pp. vii + 116, \$1.75

Since only a very restricted number would have either the time or the inclination to read Santayana with anything approaching completeness, this contribution, because of its fidelity and brevity, in a pleasant and adequate way closes a gap in one's knowledge of modern philosophical thought which should not be allowed to remain open. The selection of Santayana's Moral Philosophy is particularly apt, as it is quite obvious that the philosopher's ultimate message is a moral one: "moral philosophy . . . is my chosen subject; . . . the hierarchy of goods, the architecture of values, is the subject that concerns man most."

The first section of the book, entitled "Naturalism and Dualism"—an outline of the general trend of Santayana's philosophical writings—will prove difficult reading even for the initiate; but it must be borne in mind that the author is endeavoring to give a brief digest of a very complex and, not infrequently, contradictory practice of eclecticism. The essential portion of Dr. Munitz's work, his two final chapters, bring out clearly the "common-sense" approach which Santayana always endeavored to adopt in his treatment of moral philosophy, yet do not obscure the aesthetic temperament which colors, as it were, all of his thought. True, the systematic philosopher or ethicist would appreciate a greater effort at sequence and logical order—but Santayana himself made such a task quite impossible. The Scholastic philosopher will, of course, find it impossible to agree

on many points. It is not as "the result of blindly following authoritatively imposed and supposedly supernatural commands," but because of reason that he accepts an ultimate cause and authority. He will also reject such generalizations as: "Since human nature is no exception in the natural history of the world, nature exists as little for its sake as for the sake of anything else," and "Our own standards are relative to our needs and purposes, but these cannot be subordinated in their claims to the will of some higher authority, since there is no such authority. Nature has no plan and illustrates no moral intent." But Dr. Munitz is merely reporting, not evaluating nor criticizing the truth or tenability of the frequently brilliant thought of a prolific writer.

PATRICK J. HOLLORAN.

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PSYCHOLOGIA METAPHYSICA

Paul Siwek, S. J.

Gregorian University Press, Rome, 1939, pp. xvi + 546

The present volume by the professor of Rational Psychology at the Gregorian University is a second edition, revised and enlarged, of his *Psychologia Metaphysica*. The present new edition is more fully elaborated, although much of the matter of the first edition pertaining to Experimental Psychology has been left out. This omission will, no doubt, be a source of regret to some, for Dr. Siwek's knowledge of Experimental Psychology is well-known.

Some of the book's commendable features are: two indices, one of subjects, the other of authors cited; a very large bibliography, divided according to subjects, and especially valuable for the articles listed from learned journals in many languages. Besides these points, a chapter of some thirty pages at the end of the book gives a thoroughgoing treatment of Evolution. Both teachers and students will be pleased to learn that the proofs of the theses are given clearly, in form, and, what is more, carried far enough to arrive explicitly at fundamental metaphysical principles.

The author follows the views of the Thomistic School strictly. For example, he holds that we have indirect cognition of singulars; that the act of sensation terminated immediately in external sensibles; that animals have memory in the proper sense of the word, etc. As regards the seat of sensation, Siwek holds that it is in the proper organs of the several senses, a contention in which he has the greater number of physiologists and several Scholastics as adversaries.

More detailed treatment of some topics would be desirable, v. g., on the cognition of singulars. Here some mention of the nature and function of the *vis cogitativa* in man could be introduced, as well as the part this faculty plays in the formation of the universal and in a singular judgment. In the latter case the Thomists say that the singular subject is in the cogitative faculty and the universal predicate in the intellect. Then Suarez' objection could be considered: *Ubi, quae, erit copula* (where, then, is the link?). But this is a minor deficiency. The book as a whole is valuable and highly to be recommended, both to students and to teachers.

JAMES J. DOYLE.

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RÉALISME THOMISTE ET CRITIQUE DE LA CONNAISSANCE

Étienne Gilson

J. Vrin, Paris, 1939, pp. 239

Most vexed of the problems in contemporary thought is the so-called epistemological problem. It seems that however strong a man's metaphysical (or ontological) position, it offers no guarantee of success in dealing with this question. One reason may be that very often a question of methodology is introduced into the consideration without sufficient warrant. And since methodology as such is not properly an ontological datum, even a strongly realistic metaphysics may help but little. But metaphysics of existence as such should give one a strictly objective approach to the problem. It imposes a kind of stern humility before the evidence of existences; it will not let the problem of knowledge be attempted apart from metaphysics—as Descartes, Kant, and many recent thinkers have approached it. The existential philosopher (for whom "*connaissance humaine*" still

has validity), spurning the accusation that he must be either a dogmatist or a criticist, finds a *tertium quid* in the position of the realist metaphysician. We do not prove that our mind knows; we know that we know. We do not labor to prove the existence of that "external world." We simply recognize in the causality of knowledge the essential duality of mind and thing known.

This, we believe, is the position of M. Gilson in this study. Taking up the challenge that he makes the existence of the external world a postulate, Gilson proceeds to review in detail and with pleasing exactness the positions of contemporary Scholastic epistemologists. All Cartesian or Kantian attempts are found suicidal on their own grounds.

The attempts by Noël, Picard, Roland-Gosselin, and Maréchal to correct certain extravagant views concerning *common sense*, are presented and criticized in five essays. No matter how important the tenets set forth in the two essays following (*L'impossibilité du réalisme critique*, *Le sujet connaissant*), we think the last chapter, *L'appréhension de l'existence*, to be the most worthwhile. In this chapter, following the authentic Thomistic psychology as found in St. Thomas and Cajetan, the author attempts a very important task—to show precisely how the existence of things enters into human cognition. Briefly, man as a whole, not merely his intellect, is in contact with being. In any single cognition, man's whole cognitive apparatus, including the internal senses is at work. In the mere concept the intellect knows only *what* a thing is. But things do not exist in their mere *whatness*. In the initial stage of cognition, therefore, man must be aided by more than his intellect; the *ratio particularis* must come into play. Beyond the concept lies the judgment *that things exist*. But, of course, these few remarks do not adequately represent Gilson's stand. The book under review should be permitted to speak for itself.

THOMAS C. DONOHUE.

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PLATO TODAY

R. H. S. Crossman

Oxford University Press, New York, 1939, pp. vii + 311, \$2.50

In this stimulating criticism of modern governments the author has given expression to an impulse which every student of the ancients has often felt: the impulse to formulate that precise comment which a classic thinker would have offered if confronted with our modern problems. Basing himself on a deeply-felt interpretation of the Platonic writings and their setting in the Hellas of Thucydides, Mr. Crossman scrutinizes through the microscope of Platonism a cross-section of modern occidental society with its vagaries and its merits in humorous juxtaposition.

Especially readable are Plato's open letter to Mr. Roosevelt and his discussion with an American educationalist. The criticism of English democracy is less sparkling, a trifle preachy. Communism is approached in the spirit: "we have so much in common, it is a pity we differ on the most essential point." Plato would be keenly interested in the communist experiment, for it is a definite attempt to govern in accordance with a philosophy (p. 225); but he would condemn it wholeheartedly—and eloquently (p. 233)—for its godlessness.

We cannot condone a certain unhappy penchant of the author for defending contraceptives and homosexual relationships (pp. 199, 210, 204), as an expression of the instinct of pleasure considered adequately separable from that of propagation of the species. The whole chapter on the family is fatuous, expressing perhaps a sort of fidelity to Plato's own misconceptions.

The author might well have compressed his preliminary review of Plato and his philosophy, omitting irrelevant details; it is well done, but many such exist already. Unnecessary antagonism might have been avoided by not dragging in the conviction that Plato distorted Socratic philosophy ("just as Paul of Tarsus created an orthodox Christian theology strangely remote in spirit from that of Jesus," p. 89). Plato's failure was due, not to his unrealism and ignorance of human nature (pp. 102, 280), but to the fact that only in heaven may we look for the *perfect* realization of ideals which are yet the fundamental wellsprings of human action.

ROBERT G. NORTH.